

ORDINANCE NO. 2012-01

AN ORDINANCE OF THE MAYOR AND VILLAGE COMMISSION OF THE VILLAGE OF BISCAYNE PARK, FLORIDA, RELATING TO CHAPTER 6.5; REPEALING THE EXISTING PROVISIONS OF CHAPTER 6.5 TO REPLACE SAME WITH THE MODEL FLOODPLAIN ORDINANCE REQUIRED BY THE STATE LEGISLATURE; PROVIDING FOR RESPONSIBILITIES OF THE BUILDING OFFICIAL AS FLOOD PLAIN COORDINATOR WHICH MODIFICATIONS ARE MANDATED; ADOPTING A NEW SECTION 6.5; ADOPTING FLOOD HAZARD MAPS, DESIGNATING A FLOODPLAIN ADMINISTRATOR, ADOPTING PROCEDURES AND CRITERIA FOR DEVELOPMENT IN FLOOD HAZARD AREAS, AND FOR OTHER PURPOSES; ADOPTING LOCAL ADMINISTRATIVE AMENDMENTS AND LOCAL TECHNICAL AMENDMENTS TO THE FLORIDA BUILDING CODE PERTAINING TO THE DESIGN AND CONSTRUCTION OF BUILDINGS AND STRUCTURES IN FLOOD HAZARD AREAS; PROVIDING FOR ORDINANCES IN CONFLICT, REPEALER, CODIFICATION, SEVERABILITY AND AN EFFECTIVE DATE.

WHEREAS, on December 1, 1992, the Village Commission adopted Ordinance No. 277, in compliance with federally imposed requirements to protect the public health, safety and general welfare by minimizing flood losses in the flood hazard areas of Biscayne Park; and,

WHEREAS, since the adoption of Ordinance No. 277, the State of Florida has updated its Flood Damage Prevention Ordinance; and,

WHEREAS, in 2009 the Village, in order to be consistent and in compliance with the State of Florida's Ordinance, the Village Commission of the Village of Biscayne Park believes it to be in the best interests of its citizenry to repeal the existing sections of the Code addressing flood damage prevention and replace it with a compliant ordinance; and,

WHEREAS, thereafter, on November 2011, the Village once again updated its Floodplain Ordinance (Ordinance 2011-03) by modifying the existing ordinance as it relates to specific FEMA requirements and deadlines; and,

WHEREAS, the Legislature of the State of Florida has, in Chapter 166, Florida Statutes, conferred upon local governments the authority to adopt regulations designed to promote the public health, safety, and general welfare of its citizenry; and

WHEREAS, the Federal Emergency Management Agency has identified special flood hazard areas within the boundaries of the Village of Biscayne Park and such areas are subject to periodic inundation which may result in loss of life and property, health and safety hazards, disruption of commerce and governmental services, extraordinary public expenditures for flood protection and relief, and impairment of the tax base, all of which adversely affect the public health, safety and general welfare, and

1 **WHEREAS**, the Village was accepted for participation in the National Flood Insurance
2 Program on December 1, 1992, and the Village Commission desires to continue to meet the
3 requirements of Title 44 Code of Federal Regulations, Sections 59 and 60, necessary for such
4 participation; and
5

6 **WHEREAS**, Chapter 553, Florida Statutes, was adopted by the Florida Legislature to
7 provide a mechanism for the uniform adoption, updating, amendment, interpretation and
8 enforcement of a state building code, called the *Florida Building Code*; and
9

10 **WHEREAS**, Chapter 553, Florida Statutes, allows for local administrative amendments to
11 the *Florida Building Code* which provide for more stringent requirements than those specified in the
12 Code; and
13

14 **WHEREAS**, the Village Commission has determined that it is in the public interest to
15 adopt the proposed floodplain management regulations that are coordinated with the *Florida Building*
16 *Code*; and
17

18 **WHEREAS**, the Village Commission has determined that it is in the public interest to
19 adopt the proposed local technical amendments and proposed local administrative amendments to
20 the 2010 *Florida Building Code* and that the proposed amendments are not more stringent than
21 necessary to address the need identified, do not discriminate against materials, products or
22 construction techniques of demonstrated capabilities, are in compliance with section 553.73(4)(a),
23 Florida Statutes, where applicable, and the proposed amendments are in compliance with section
24 553.73(5), Florida Statutes, where applicable.
25

26 **WHEREAS**, the Village, previously adopted its Flood Plain Management Ordinance in
27 2004, and readopted in 2011, which was incorporated into the Village's Code at 6.5; and,
28

29 **WHEREAS**, the state legislature has again modified the requirements for running the
30 Floodplain Management program; and,
31

32 **WHEREAS**, the Mayor and Village Commission desire to repeal the existing code and
33 replace same with the Model Code proposed by the legislature as it relates to flood plain
34 management.
35

36 **BE IT ORDAINED BY THE VILLAGE COMMISSION OF THE VILLAGE OF**
37 **BISCAYNE PARK, FLORIDA, THAT THE FOLLOWING FLOODPLAIN**
38 **MANAGEMENT REGULATIONS, AND THE FOLLOWING LOCAL**
39 **ADMINISTRATIVE AMENDMENTS AND LOCAL TECHNICAL AMENDMENTS TO**
40 **THE 2010 FLORIDA BUILDING CODE, ARE HEREBY ADOPTED.AS FOLLOWS:**
41

42
43 **Section 1.** Each and all the foregoing Whereas clauses are true and correct and are
44 incorporated herein.
45

46 **Section 2.** Chapter 6.5 of the Village's Code of Ordinances is hereby amended and
47 simultaneously repealing the prior version of Chapter 6.5, entitled "Flood Damage Prevention" to
48 read as follows:

Chapter 6.5 FLOODPLAIN MANAGEMENT REGULATIONS

6-5.1 General Provisions.

(A) **Title.** These regulations shall be known as the *Floodplain Management Ordinance* of the Village of Biscayne Park, hereinafter referred to as "this ordinance."

(B) **Scope.** The provisions of this ordinance shall apply to all development that is wholly within or partially within any flood hazard area, including but not limited to the subdivision of land; filling, grading, and other site improvements and utility installations; construction, alteration, remodeling, enlargement, improvement, replacement, repair, relocation or demolition of buildings, structures, and facilities that are exempt from the *Florida Building Code*; installation or replacement of tanks; placement of recreational vehicles; installation of swimming pools; and any other development.

(C) **Intent.** The purposes of this ordinance and the flood load and flood resistant construction requirements of the *Florida Building Code* are to establish minimum requirements to safeguard the public health, safety, and general welfare and to minimize public and private losses due to flooding through regulation of development in flood hazard areas to:

(1) Minimize unnecessary disruption of commerce, access and public service during times of flooding;

(2) Require the use of appropriate construction practices in order to prevent or minimize future flood damage;

(3) Manage filling, grading, dredging, mining, paving, excavation, drilling operations, storage of equipment or materials, and other development which may increase flood damage or erosion potential;

(4) Manage the alteration of flood hazard areas, watercourses, and shorelines to minimize the impact of development on the natural and beneficial functions of the floodplain;

(5) Minimize damage to public and private facilities and utilities;

(6) Help maintain a stable tax base by providing for the sound use and development of flood hazard areas;

(7) Minimize the need for future expenditure of public funds for flood control projects and response to and recovery from flood events; and

(8) Meet the requirements of the National Flood Insurance Program for community participation as set forth in the Title 44 Code of Federal Regulations, Section 59.22.

(D) **Coordination with the *Florida Building Code*.** This ordinance is intended to be administered and enforced in conjunction with the *Florida Building Code*. Where section numbers of the *Florida Building Code* are cited, the section numbers refer to the 2010 *Florida Building Code*. If cited section numbers are changed in subsequent editions of the code, then the section numbers shall

1 refer to comparable sections. Where cited, ASCE 24 refers to the edition of the standard that is
2 referenced by the *Florida Building Code*.
3

4 (E) **Warning.** The degree of flood protection required by this ordinance and the *Florida*
5 *Building Code*, as amended by this community, is considered reasonable for regulatory purposes and is
6 based on scientific and engineering considerations. Larger floods can and will occur. Flood heights may
7 be increased by man-made or natural causes. This ordinance does not imply that land outside of mapped
8 special flood hazard areas, or that uses permitted within such flood hazard areas, will be free from
9 flooding or flood damage. The flood hazard areas and base flood elevations contained in the Flood
10 Insurance Study and shown on Flood Insurance Rate Maps and the requirements of Title 44 Code of
11 Federal Regulations to remain eligible for participation in the National Flood Insurance Program. No
12 guaranty of vested use, existing use, or future use is implied or expressed by compliance with this
13 ordinance.
14

15 (F) **Disclaimer of Liability.** This ordinance shall not create liability on the part of the
16 Village Commission of the Village of Biscayne Park or by any officer or employee thereof for any flood
17 damage that results from reliance on this ordinance or any administrative decision lawfully made
18 thereunder.
19

20 6-5.2 **Applicability**

21

22 (A) **General.** Where there is a conflict between a general requirement and a specific
23 requirement, the specific requirement shall be applicable.
24

25 (B) **Areas to which this ordinance applies.** This ordinance shall apply to all flood
26 hazard areas within the Village of Biscayne Park, as established in Section 6-5.2(C) of this ordinance.
27

28 (C) **Basis for establishing flood hazard areas.** The Flood Insurance Study for
29 Biscayne Park dated October 6, 2009, and all subsequent amendments and revisions, and the
30 accompanying Flood Insurance Rate Maps (FIRM) dated September 1, 2009 (Maps 12086C0139L,
31 12086C0143L and 12086C0306L), and all subsequent amendments and revisions to such maps, are
32 adopted by reference as a part of this ordinance and shall serve as the minimum basis for
33 establishing flood hazard areas. Studies and maps that establish flood hazard areas are on file at
34 Village Hall, 640 NE 114th Street; Building Department, Biscayne Park, Florida 33161.
35

36 (D) **Submission of additional data to establish flood hazard areas.** To establish
37 flood hazard areas and base flood elevations, pursuant to 6-5.10(G)-(I) of this ordinance the
38 Floodplain Administrator may require submission of additional data. Where field surveyed
39 topography prepared by a Florida licensed professional surveyor or digital topography accepted by
40 the community indicates that ground elevations:
41

42 (1) Are below the closest applicable base flood elevation, even in areas not
43 delineated as a special flood hazard area on a FIRM, the area shall be considered as flood
44 hazard area and subject to the requirements of this ordinance and, as applicable, the
45 requirements of the *Florida Building Code*.

46 (2) Are above the closest applicable base flood elevation, the area shall be
47 regulated as special flood hazard area unless the applicant obtains a Letter of Map Change
48 that removes the area from the special flood hazard area.

(E) **Other laws.** The provisions of this ordinance shall not be deemed to nullify any provisions of local, state or federal law.

(F) **Abrogation and greater restrictions.** This ordinance supersedes any ordinance in effect for management of development in flood hazard areas. However, it is not intended to repeal or abrogate any existing ordinances including land development regulations, zoning ordinances, stormwater management regulations. In the event of a conflict between this ordinance and any other ordinance, the more restrictive shall govern. This ordinance shall not impair any deed restriction, covenant or easement, but any land that is subject to such interests shall also be governed by this ordinance.

(G) **Interpretation.** In the interpretation and application of this ordinance, all provisions shall be:

- (1) Considered as minimum requirements;
- (2) Liberally construed in favor of the governing body; and
- (3) Deemed neither to limit nor repeal any other powers granted under state statutes.

6-5.3 Duties And Powers Of The Floodplain Administrator

(A) **Designation.** The **Building Official** is designated as the Floodplain Administrator. The Floodplain Administrator may delegate performance of certain duties to other employees.

(B) The Floodplain Administrator is authorized and directed to administer and enforce the provisions of this ordinance and shall be the Floodplain Administrator, which terms shall be interchangeable hereinafter. The Floodplain Administrator shall have the authority to render interpretations of this ordinance consistent with the intent and purpose of this ordinance and may establish policies and procedures in order to clarify the application of its provisions. Such interpretations, policies, and procedures shall not have the effect of waiving requirements specifically provided in this ordinance without the granting of a variance pursuant to Section 6-5.12 of this ordinance.

(C) **Applications and permits.** The Floodplain Administrator, in coordination with other pertinent offices of the community, shall:

- (1) Review applications and plans to determine whether proposed new development will be located in flood hazard areas;
- (2) Review applications for modification of any existing development in flood hazard areas for compliance with the requirements of this ordinance;
- (3) Interpret flood hazard area boundaries where such interpretation is necessary to determine the exact location of boundaries; a person contesting the determination shall have the opportunity to appeal the interpretation;
- (4) Provide available flood elevation and flood hazard information;
- (5) Determine whether additional flood hazard data shall be obtained from other sources or shall be developed by an applicant;

(6) Review applications to determine whether proposed development will be reasonably safe from flooding;

(7). Issue floodplain development permits or approvals for development other than buildings and structures that are subject to the *Florida Building Code*, including buildings, structures, and facilities exempt from the *Florida Building Code*, when compliance with this ordinance is demonstrated, or disapprove the same in the event of noncompliance; and

(8) Coordinate with and provide comments to the Floodplain Administrator to assure that applications for building permits for buildings and structures in flood hazard areas comply with the requirements of this ordinance.

6-5.4 Determinations for existing buildings and structures. For applications for building permits to improve buildings and structures, including alterations, movement, enlargement, replacement, repair, change of occupancy, additions, rehabilitations, renovations, substantial improvements, repairs of substantial damage, and any other improvement of or work on such buildings and structures, the Floodplain Administrator, shall:

(A) Estimate the market value, or require the applicant to obtain an appraisal of the market value prepared by a qualified independent appraiser, of the building or structure before the start of construction of the proposed work; in the case of repair, the market value of the building or structure shall be the market value before the damage occurred and before any repairs are made;

(B) Compare the cost to perform the improvement, the cost to repair a damaged building to its pre-damaged condition, or the combined costs of improvements and repairs, if applicable, to the market value of the building or structure;

(C) Determine and document whether the proposed work constitutes substantial improvement or repair of substantial damage; and

(D) Notify the applicant if it is determined that the work constitutes substantial improvement or repair of substantial damage and that compliance with the flood resistant provisions of the *Florida Building Code* and this ordinance is required.

6-5.5 Modifications of the strict application of the requirements of the *Florida Building Code*. The Floodplain Administrator shall review requests that seek approval to modify the strict application of the flood load and flood resistant construction requirements of the *Florida Building Code* to determine whether such requests require the granting of a variance pursuant to Section 6-5.12 of this ordinance.

6-5.6 Coordination of Notices and orders. The Floodplain Administrator who is the Building Official shall coordinate the issuance of all necessary notices or orders to ensure compliance with this ordinance.

6-5.7 Inspections. The Floodplain Administrator shall make the required inspections as specified in Section 6-5.11 of this ordinance for development that is not subject to the *Florida Building Code*, including buildings, structures, facilities exempt from the *Florida Building Code*. The Building Official shall inspect flood hazard areas to determine if development is undertaken without issuance of a permit.

6-5.8 **Other duties of the Floodplain Administrator.** The Floodplain Administrator shall have other duties, including but not limited to:

(A) Establish, procedures for administering and documenting determinations of substantial improvement and substantial damage made pursuant to Section 6-5.4 of this ordinance;

(B) Require that applicants proposing alteration of a watercourse notify adjacent communities and the Florida Division of Emergency Management, State Floodplain Management Office, and submit copies of such notifications to the Federal Emergency Management Agency (FEMA);

(C) Require applicants who submit hydrologic and hydraulic engineering analyses to support permit applications to submit to FEMA the data and information necessary to maintain the Flood Insurance Rate Maps if the analyses propose to change base flood elevations, flood hazard area boundaries, or floodway designations; such submissions shall be made within six (6) months of such data becoming available;

(D) Review required design certifications and documentation of elevations specified by this ordinance and the *Florida Building Code* and this ordinance to determine that such certifications and documentations are complete;

(E) Notify the Federal Emergency Management Agency when the corporate boundaries of the Village of Biscayne Park are modified; and

(F) Advise applicants for new buildings and structures, including substantial improvements, that are located in any unit of the Coastal Barrier Resources System established by the Coastal Barrier Resources Act (Pub. L. 97-348) and the Coastal Barrier Improvement Act of 1990 (Pub. L. 101-591) that federal flood insurance is not available on such construction; areas subject to this limitation are identified on Flood Insurance Rate Maps as "Coastal Barrier Resource System Areas" and "Otherwise Protected Areas."

6-5.9 **Floodplain management records.** Regardless of any limitation on the period required for retention of public records, the Floodplain Administrator shall maintain and permanently keep and make available for public inspection all records that are necessary for the administration of this ordinance and the flood resistant construction requirements of the *Florida Building Code*, including Flood Insurance Rate Maps; Letters of Change; records of issuance of permits and denial of permits; determinations of whether proposed work constitutes substantial improvement or repair of substantial damage; required design certifications and documentation of elevations specified by the *Florida Building Code* and this ordinance; notifications to adjacent communities, FEMA, and the state related to alterations of watercourses; assurances that the flood carrying capacity of altered watercourses will be maintained; documentation related to appeals and variances, including justification for issuance or denial; and records of enforcement actions taken pursuant to this ordinance and the flood resistant construction requirements of the *Florida Building Code*. These records shall be available for public inspection at Village Hall, 640 NE 114th Street, Building Department, Biscayne Park, Florida 33161.

6-5.10 **Permits required.** Any owner or owner's authorized agent (hereinafter "applicant") who intends to undertake any development activity within the scope of this ordinance including buildings, structures, and facilities exempt from the *Florida Building Code*, which is wholly within or partially within any flood hazard area shall first make application to the Floodplain Administrator and shall obtain the required permit(s) and approval(s). No such permit or approval shall be issued until compliance with the requirements of this ordinance and all other applicable codes and regulations has

1 been satisfied.

2
3 (A) **Floodplain development permits or approvals.** Floodplain development permits or
4 approvals shall be issued pursuant to this ordinance for any development activities not subject to the
5 requirements of the *Florida Building Code*, including buildings, structures, and facilities exempt from the
6 *Florida Building Code*. Depending on the nature and extent of proposed development that includes a
7 building or structure, the Building Official may determine that a floodplain development permit or
8 approval is required in addition to a building permit.
9

10 (B) **Buildings, structures and facilities exempt from the *Florida Building Code*.**
11 Pursuant to the requirements of federal regulation for the National Flood Insurance Program (44
12 C.F.R. Section 60.3), floodplain development permits or approvals shall be required for the
13 following buildings, structures and facilities that are exempt from the *Florida Building Code*, and any
14 further exemptions provided by law, are subject to the requirements of this ordinance:

- 15 (1) Railroads and ancillary facilities associated with the railroad.
16 (2) Nonresidential farm buildings on farms, as provided in section 604.50, Florida
17 Statutes
18 (3) Temporary buildings or sheds used exclusively for construction purposes.
19 (4) Mobile or modular structures used as temporary offices.
20 (5) Those structures or facilities of electric utilities, as defined in section 366.02, Florida
21 Statutes, which are directly involved in the generation, transmission, or distribution of electricity.
22 (6) Chickees constructed by the Miccosukee Tribe of Indians of Florida or the Seminole
23 Tribe of Florida. As used in this paragraph, the term "chickee" means an open-sided wooden hut
24 that has a thatched roof of palm or palmetto or other traditional materials, and that does not
25 incorporate any electrical, plumbing, or other non-wood features.
26 (7) Family mausoleums not exceeding 250 square feet in area which are prefabricated
27 and assembled on site or preassembled and delivered on site and have walls, roofs, and a floor
28 constructed of granite, marble, or reinforced concrete.
29 (8) Temporary housing provided by the Department of Corrections to any prisoner in
30 the state correctional system.

31 (9) Structures identified in section 553.73(10)(k), Florida Statutes, are not exempt from
32 the *Florida Building Code* if such structures are located in flood hazard areas established on Flood
33 Insurance Rate Maps.
34

35 (C) **Application for a permit or approval.** To obtain a floodplain development permit
36 or approval the applicant shall first file an application in writing on a form furnished by the
37 community. The information provided shall:
38

- 39 (1) Identify and describe the development to be covered by the permit or approval.
40 (2) Describe the land on which the proposed development is to be conducted by legal
41 description, street address or similar description that will readily identify and definitively locate the
42 site.
43 (3) Indicate the use and occupancy for which the proposed development is intended.
44 (4) Be accompanied by a site plan or construction documents as specified in Section 6-
45 5.10(G)-(J)105 of this ordinance.
46 (5) State the valuation of the proposed work.
47 (6) Be signed by the applicant or the applicant's authorized agent.
48 (7) Give such other data and information as required by the Building Official.

1
2 (D) **Validity of permit or approval.** The issuance of a floodplain development permit or
3 approval pursuant to this ordinance shall not be construed to be a permit for, or approval of, any
4 violation of this ordinance, the *Florida Building Codes*, or any other ordinance of this community. The
5 issuance of permits based on submitted applications, construction documents, and information shall
6 not prevent the Building Official from requiring the correction of errors and omissions.
7

8 (E) **Expiration.** A floodplain development permit or approval shall become invalid unless
9 the work authorized by such permit is commenced within 180 days after its issuance, or if the work
10 authorized is suspended or abandoned for a period of 180 days after the work commences.
11 Extensions for periods of not more than 180 days each shall be requested in writing and justifiable
12 cause shall be demonstrated.
13

14 (F) **Suspension or revocation.** The Building Official is authorized to suspend or revoke
15 a floodplain development permit or approval if the permit was issued in error, on the basis of
16 incorrect, inaccurate or incomplete information, or in violation of this ordinance or any other
17 ordinance, regulation or requirement of this community.
18

19 (G) **Other permits required.** Floodplain development permits and building permits
20 shall include a condition that all other applicable state or federal permits be obtained before
21 commencement of the permitted development, including but not limited to the following;

22 (1) The South Florida Water Management District; section 373.036, Florida Statutes.

23 (2) Florida Department of Health for onsite sewage treatment and disposal systems;
24 section 381.0065, Florida Statutes and Chapter 64E-6, Florida Administrative Code.

25 (3) Florida Department of Environmental Protection for construction, reconstruction,
26 changes, or physical activities for shore protection or other activities seaward of the coastal
27 construction control line; section 161.141, Florida Statutes.

28 (4) Florida Department of Environmental Protection for activities subject to the Joint
29 Coastal Permit; section 161.055, Florida Statutes.

30 (5) Florida Department of Environmental Protection for activities that affect wetlands
31 and alter surface water flows, in conjunction with the U.S. Army Corps of Engineers; Section 404 of
32 the Clean Water Act.
33

34 (H) **Site Plans and Construction Documents - Information for development in**
35 **flood hazard areas.** The site plan or construction documents for any development subject to the
36 requirements of this ordinance shall be drawn to scale and shall include, as applicable to the
37 proposed development:
38

39 (1) Delineation of flood hazard areas, floodway boundaries and flood zone(s), base flood
40 elevation(s), and ground elevations if necessary for review of the proposed development.

41 (2) Where flood hazard areas, base flood elevations, or floodway data are not included on
42 the FIRM or in the Flood Insurance Study, they shall be established in accordance with Section 6-
43 5.10(H) of this ordinance.

44 (3) Where the parcel on which the proposed development will take place will have more
45 than 50 lots or is larger than 5 acres and the base flood elevations are not included on the FIRM or
46 in the Flood Insurance Study, such elevations shall be established in accordance with Section 6-
47 5.10(H) of this ordinance.

(4) Location of the proposed activity and proposed structures, and locations of existing buildings and structures; in coastal high hazard areas, new buildings shall be located landward of the reach of mean high tide.

(5) Location, extent, amount, and proposed final grades of any filling, grading, or excavation.

(6) Where the placement of fill is proposed, the amount, type, and source of fill material; compaction specifications; a description of the intended purpose of the fill areas; and evidence that the proposed fill areas are the minimum necessary to achieve the intended purpose.

(7) Delineation of the Coastal Construction Control Line or notation that the site is seaward of the coastal construction control line, if applicable.

(8) Extent of any proposed alteration of sand dunes or mangrove stands, provided such alteration is approved by the Florida Department of Environmental Protection.

(9) Existing and proposed alignment of any proposed alteration of a watercourse.

The Building Official is authorized to waive the submission of site plans, construction documents, and other data not required to be prepared by a registered design professional if it is found that the nature of the proposed development is such that the review of such submissions is not necessary to ascertain compliance with this ordinance.

(I) **Information in flood hazard areas without base flood elevations (approximate Zone A).** Where flood hazard areas are delineated on the FIRM and base flood elevation data have not been provided, the Building Official shall:

(1) Obtain, review, and provide to applicants base flood elevation data available from a federal or state agency or other source or require the applicant to obtain and use base flood elevation data available from a federal or state agency or other source; or

(2) Require the applicant to develop base flood elevation data prepared in accordance with currently accepted engineering practices; or

(3) Where base flood elevation data are not available from another source, the base flood elevation is two (2) feet above the highest adjacent grade at the location of the development, provided there is no evidence indicating flood depths have been or may be greater than two (2) feet.

(4) Where the base flood elevation data are to be used to support a Letter of Map Change from FEMA, advise the applicant that the analyses shall be prepared by a Florida licensed engineer in a format required by FEMA, and that it shall be the responsibility of the applicant to satisfy the submittal requirements and pay the processing fees.

(J) **Additional analyses and certifications.** As applicable to the location and nature of the proposed development activity, and in addition to the requirements of this section, the applicant shall have the following analyses prepared and sealed by a Florida licensed engineer for submission with the site plan and construction documents:

(1) For development activities proposed to be located in a regulatory floodway, a floodway encroachment analysis that demonstrates that the encroachment of the proposed development will not cause any increase in base flood elevations; where the applicant proposes to undertake development activities that do increase base flood elevations, the applicant shall submit

1 such analysis to FEMA as specified in Section 6-5.10(J) of this ordinance and shall submit the
2 Conditional Letter of Map Revision, if issued by FEMA, with the site plan and construction
3 documents.

4 (2) For development activities proposed to be located in a riverine flood hazard area for
5 which base flood elevations are included in the Flood Insurance Study or on the FIRM and
6 floodways have not been designated, a floodway encroachment analysis which demonstrates that the
7 cumulative effect of the proposed development, when combined with all other existing and
8 anticipated flood hazard area encroachments, will not increase the base flood elevation more than
9 one (1) foot at any point within the community. This requirement does not apply in isolated flood
10 hazard areas not connected to a riverine flood hazard area or in flood hazard areas identified as
11 Zone AO or Zone AH.

12 (3) For alteration of a watercourse, an engineering analysis prepared in accordance with
13 standard engineering practices which demonstrates that the flood-carrying capacity of the altered or
14 relocated portion of the watercourse will not be decreased, and certification that the altered
15 watercourse shall be maintained in a manner which preserves the channel's flood-carrying capacity;
16 the applicant shall submit the analysis to FEMA as specified in Section 6-5.10(J) of this ordinance.

17 (K) **Submission of additional data.** When additional hydrologic, hydraulic or other
18 engineering data, studies, and additional analyses are submitted to support an application, the
19 applicant has the right to seek a Letter of Map Change from FEMA to change the base flood
20 elevations, change floodway boundaries, or change boundaries of flood hazard areas shown on
21 FIRMs, and to submit such data to FEMA for such purposes. The analyses shall be prepared by a
22 Florida licensed engineer in a format required by FEMA. Submittal requirements and processing
23 fees shall be the responsibility of the applicant.

24 6-5.11 **Inspections - General.** Development for which a permit or approval is required shall be
25 subject to inspection.

26 (A) **Development other than buildings and structures.** The Building Official shall
27 inspect all development to determine compliance with the requirements of this ordinance and the
28 conditions of issued floodplain development permits or approvals.

29 (B) **Buildings, structures, and facilities exempt from the *Florida Building Code*.**
30 The Building Official shall inspect buildings and structures exempt from the *Florida Building Code* to
31 determine compliance with the requirements of this ordinance and the conditions of issued
32 floodplain development permits or approvals.

33 (C) **Buildings, structures, and facilities exempt from the *Florida Building Code*,
34 lowest floor inspection.** Upon placement of the lowest floor, including basement, and prior to
35 further vertical construction, the owner of a building or structure exempt from the *Florida Building*
36 *Code*, or the owner's authorized agent, shall submit to the Building Official:

37 (1) If a design flood elevation was used to determine the required elevation of
38 the lowest floor, the certification of elevation of the lowest floor prepared and sealed by a
39 Florida licensed professional surveyor; or

40 (2) If the elevation used to determine the required elevation of the lowest floor
41 was determined in accordance with Section 6-5.10(H) of this ordinance, the documentation
42

1 of height of the lowest floor above highest adjacent grade, prepared by the owner or the
2 owner's authorized agent.

3
4 (D) **Buildings, structures, and facilities exempt from the *Florida Building Code*,**
5 **final inspection.** As part of the final inspection, the owner or owner's authorized agent shall
6 submit to the Building Official a final certification of elevation of the lowest floor or final
7 documentation of the height of the lowest floor above the highest adjacent grade; such certifications
8 and documentations shall be prepared as specified in Section 6-5.11(C) of this ordinance.
9

10 6-5.12 **Variances And Appeals**

11
12 (A) **General.** The Village Commission shall hear and decide on requests for appeals and
13 requests for variances from the strict application of the requirements of this ordinance. Pursuant to
14 section 553.73(5), Florida Statutes, the Village Council shall hear and decide on requests for appeals
15 and requests for variances from the strict application of the flood resistant construction
16 requirements of the *Florida Building Code*. This section does not apply to Section 3109, of the *Florida*
17 *Building Code, Building*.

18
19 (B) **Appeals.** The Village Commission shall hear and decide appeals when it is alleged
20 there is an error in any requirement, decision, or determination made by the Building Official in the
21 administration and enforcement of this ordinance Any person aggrieved by the decision of the
22 Village Commission may appeal such decision to the Circuit Court, as provided by Florida Statutes.
23

24 (C) **Limitations on authority to grant variances.** The Village Commission shall base its
25 decisions on variances on technical justifications submitted by applicants, the considerations for
26 issuance in Section 6-5.12(G) of this ordinance, the conditions of issuance set forth in Section 6-
27 5.12(H) of this ordinance, and the comments and recommendation of the Building Official. The
28 Village Commission has the right to attach such conditions as it deems necessary to further the
29 purposes and objectives of this ordinance.
30

31 (D) **Restrictions in floodways.** A variance shall not be issued for any proposed
32 development in a floodway if any increase in base flood elevations would result, as evidenced by the
33 applicable analyses and certifications required in Section 6-5.10(I) of this ordinance.
34

35 (E) **Historic buildings.** A variance is authorized to be issued for the repair,
36 improvement, or rehabilitation of a historic building that is determined eligible for the exception to
37 the flood resistant construction requirements of the *Florida Building Code, Existing Building*, Chapter 11
38 Historic Buildings, upon a determination that the proposed repair, improvement, or rehabilitation
39 will not preclude the building's continued designation as a historic building and the variance is the
40 minimum necessary to preserve the historic character and design of the building. If the proposed
41 work precludes the building's continued designation as a historic building, a variance shall not be
42 granted and the building and any repair, improvement, and rehabilitation shall be subject to the
43 requirements of the *Florida Building Code*.
44

45 (F) **Functionally dependent uses.** A variance is authorized to be issued for the
46 construction or substantial improvement necessary for the conduct of a functionally dependent use,
47 as defined in this ordinance, provided the variance meets the requirements of Section 6-5.12(C), is

1 the minimum necessary considering the flood hazard, and all due consideration has been given to
2 use of methods and materials that minimize flood damage during occurrence of the base flood.

3
4 (G) **Considerations for issuance of variances.** In reviewing requests for variances, the
5 Village Commission shall consider all technical evaluations, all relevant factors, all other applicable
6 provisions of the *Florida Building Code*, this ordinance, and the following:
7

8 (1) The danger that materials and debris may be swept onto other lands resulting
9 in further injury or damage;

10 (2) The danger to life and property due to flooding or erosion damage;

11 (3) The susceptibility of the proposed development, including contents, to flood
12 damage and the effect of such damage on current and future owners;

13 (4) The importance of the services provided by the proposed development to the
14 community;

15 (5) The availability of alternate locations for the proposed development that are
16 subject to lower risk of flooding or erosion;

17 (6) The compatibility of the proposed development with existing and anticipated
18 development;

19 (7) The relationship of the proposed development to the comprehensive plan and
20 floodplain management program for the area;

21 (8) The safety of access to the property in times of flooding for ordinary and
22 emergency vehicles;

23 (9) The expected heights, velocity, duration, rate of rise and debris and sediment
24 transport of the floodwaters and the effects of wave action, if applicable, expected at the site;
25 and

26 (10) The costs of providing governmental services during and after flood
27 conditions including maintenance and repair of public utilities and facilities such as sewer,
28 gas, electrical and water systems, streets and bridges.

29
30 (H) **Conditions for issuance of variances.** Variances shall be issued only upon:

31 (1) Submission by the applicant, of a showing of good and sufficient cause that the unique
32 characteristics of the size, configuration, or topography of the site limit compliance with any
33 provision of this ordinance or the elevation standards;

34 (2i) Determination by the Village Commission that:

35 (a) Failure to grant the variance would result in exceptional hardship due
36 to the physical characteristics of the land that render the lot undevelopable; increased
37 costs to satisfy the requirements or inconvenience do not constitute hardship;

38 (b) The granting of a variance will not result in increased flood heights,
39 additional threats to public safety, extraordinary public expense, nor create nuisances,
40 cause fraud on or victimization of the public or conflict with existing local laws and
41 ordinances; and

42 (c) The variance is the minimum necessary, considering the flood hazard,

1 to afford relief;

2 (d) Receipt of a signed statement by the applicant that the variance, if
3 granted, shall be recorded in the Office of the Clerk of the Court in such a manner
4 that it appears in the chain of title of the affected parcel of land; and

5 (e) If the request is for a variance to allow construction of the lowest
6 floor of a building, or substantial improvement of a building, below the elevation, a
7 copy in the record of a written notice from the Building Official to the applicant for
8 the variance, specifying the difference between the base flood elevation and the
9 proposed elevation of the lowest floor, stating that the cost of federal flood
10 insurance will be commensurate with the increased risk resulting from the reduced
11 floor elevation (up to amounts as high as \$25 for \$100 of insurance coverage), and
12 stating that construction below the base flood elevation increases risks to life and
13 property.

14 6-5.13 Violations

15 (A) **Violations.** Any construction or development in a flood hazard area that is
16 performed without an issued permit, that is in conflict with an issued permit, or that does not fully
17 comply with this ordinance, shall be deemed a violation of this ordinance. A building or structure
18 without the documentation of elevation of the lowest floor, other required design certifications, or
19 other evidence of compliance required by this ordinance or the *Florida Building Code* is presumed to
20 be a violation until such time as that documentation is provided.

21 (B) **Authority.** For development that is not within the scope of the *Florida Building Code*
22 but that is regulated by this ordinance and that is determined to be a violation, the Building Official
23 is authorized to serve notices of violation or stop work orders to owners of the property involved,
24 to the owner's agent, or to the person or persons performing the work.

25 (C) **Unlawful continuance.** Any person who shall continue any work after having been
26 served with a notice of violation or a stop work order, except such work as that person is directed to
27 perform to remove or remedy a violation or unsafe condition, shall be subject to penalties as
28 prescribed by law.

29 6-5.14 Definitions - Generally

30 (A) **Scope.** Unless otherwise expressly stated, the following words and terms shall, for the
31 purposes of this ordinance, have the meanings shown in this section.

32 (B) **Terms defined in the *Florida Building Code*.** Where terms are not defined in this
33 ordinance and are defined in the *Florida Building Code*, such terms shall have the meanings ascribed to
34 them in that code.

35 (C) **Terms not defined.** Where terms are not defined in this ordinance or the *Florida Building*
36 *Code*, such terms shall have ordinarily accepted meanings such as the context implies.

37 (D) **Definitions**

1 **Alteration of a watercourse.** A dam, impoundment, channel relocation, change in channel
2 alignment, channelization, or change in cross-sectional area of the channel or the channel capacity,
3 or any other form of modification which may alter, impede, retard or change the direction and/or
4 velocity of the riverine flow of water during conditions of the base flood.
5

6 **Appeal.** A request for a review of the Floodplain Administrator's interpretation of any provision of
7 this ordinance or a request for a variance.
8

9 **ASCE 24.** A standard titled *Flood Resistant Design and Construction* that is referenced by the *Florida*
10 *Building Code*. ASCE 24 is developed and published by the American Society of Civil Engineers,
11 Reston, VA.
12

13 **Base flood.** A flood having a 1-percent chance of being equaled or exceeded in any given year.
14 [Also defined in FBC, B, Section 1612.2.] The base flood is commonly referred to as the "100-year
15 flood" or the "1-percent-annual chance flood."
16

17 **Base flood elevation.** The elevation of the base flood, including wave height, relative to the
18 National Geodetic Vertical Datum (NGVD), North American Vertical Datum (NAVD) or other
19 datum specified on the Flood Insurance Rate Map (FIRM). [Also defined in FBC, B, Section
20 1612.2.]
21

22 **Basement.** The portion of a building having its floor subgrade (below ground level) on all sides.
23 [Also defined in FBC, B, Section 1612.2.]
24

25 **Building Official.** The officer or other designated authority charged with the administration and
26 enforcement of the *Florida Building Code*, or a duly authorized representative. [Also defined in FBC,
27 B, Section 1612.2.] For the purposes of the implementation of this ordinance, the Building Official
28 is the Floodplain Administrator.
29

30 **Design flood.** The flood associated with the greater of the following two areas: [Also defined in
31 FBC, B, Section 1612.2.]

- 32 1. Area with a floodplain subject to a 1-percent or greater chance of flooding in any year; or
33 2. Area designated as a flood hazard area on the community's flood hazard map, or otherwise
34 legally designated.
35

36 **Design flood elevation.** The elevation of the "design flood," including wave height, relative to the
37 datum specified on the community's legally designated flood hazard map. In areas designated as
38 Zone AO, the design flood elevation shall be the elevation of the highest existing grade of the
39 building's perimeter plus the depth number (in feet) specified on the flood hazard map. In areas
40 designated as Zone AO where the depth number is not specified on the map, the depth number
41 shall be taken as being equal to two (2) feet. [Also defined in FBC, B, Section 1612.2.]
42

43 **Development.** Any man-made change to improved or unimproved real estate, including but not
44 limited to, buildings or other structures, tanks, temporary structures, temporary or permanent
45 storage of equipment or materials, mining, dredging, filling, grading, paving, excavations, drilling
46 operations or any other land disturbing activities.
47

1 **Encroachment.** The advancement or infringement of fill, excavation, buildings, permanent
2 structures or other development into a flood hazard area which may impede or alter the flow
3 capacity of riverine flood hazard areas.
4

5 **Existing building and existing structure.** Any buildings and structures for which the “start of
6 construction” commenced before December 1, 1992. [Also defined in FBC, B, Section 1612.2.]
7

8 **Federal Emergency Management Agency (FEMA).** The federal agency that, in addition to
9 carrying out other functions, administers the National Flood Insurance Program.
10

11 **Flood or flooding.** A general and temporary condition of partial or complete inundation of
12 normally dry land from: [Also defined in FBC, B, Section 1612.2.]

- 13 1. The overflow of inland or tidal waters.
- 14 2. The unusual and rapid accumulation or runoff of surface waters from any source.
15

16 **Flood damage-resistant materials.** Any construction material capable of withstanding direct and
17 prolonged contact with floodwaters without sustaining any damage that requires more than cosmetic
18 repair. [Also defined in FBC, B, Section 1612.2.]
19

20 **Flood hazard area.** The greater of the following two areas: [Also defined in FBC, B, Section
21 1612.2.]

- 22 1. The area within a floodplain subject to a 1-percent or greater chance of flooding in any year.
- 23 2. The area designated as a flood hazard area on the community’s flood hazard map, or
24 otherwise legally designated.
25

26 **Flood Insurance Rate Map (FIRM).** The official map of the community on which the Federal
27 Emergency Management Agency has delineated both special flood hazard areas and the risk
28 premium zones applicable to the community. [Also defined in FBC, B, Section 1612.2.]
29

30 **Flood Insurance Study (FIS).** The official report provided by the Federal Emergency
31 Management Agency that contains the Flood Insurance Rate Map, the Flood Boundary and
32 Floodway Map (if applicable), the water surface elevations of the base flood, and supporting
33 technical data. [Also defined in FBC, B, Section 1612.2.]
34

35 **Floodplain Administrator.** The office or position designated and charged with the administration
36 and enforcement of this ordinance. For the Village's purposes the Building Official shall serve as
37 the Floodplain Administrator.
38

39 **Floodplain development permit or approval.** An official document or certificate issued by the
40 community, or other evidence of approval or concurrence, which authorizes performance of specific
41 development activities that are located in flood hazard areas and that are determined to be compliant
42 with this ordinance.
43

44 **Floodway.** The channel of a river or other riverine watercourse and the adjacent land areas that
45 must be reserved in order to discharge the base flood without cumulatively increasing the water
46 surface elevation more than a designated height. [Also defined in FBC, B, Section 1612.2.]

Floodway encroachment analysis. An engineering analysis of the impact that a proposed encroachment into a floodway is expected to have on the floodway boundaries and base flood elevations; the evaluation shall be prepared by a qualified Florida licensed engineer using standard engineering methods and models.

Florida Building Code. The family of codes adopted by the Florida Building Commission, including: *Florida Building Code, Building*; *Florida Building Code, Residential*; *Florida Building Code, Existing Building*; *Florida Building Code, Mechanical*; *Florida Building Code, Plumbing*; *Florida Building Code, Fuel Gas*.

Functionally dependent use. A use which cannot perform its intended purpose unless it is located or carried out in close proximity to water, including only docking facilities, port facilities that are necessary for the loading and unloading of cargo or passengers, and ship building and ship repair facilities; the term does not include long-term storage or related manufacturing facilities.

Highest adjacent grade. The highest natural elevation of the ground surface prior to construction next to the proposed walls or foundation of a structure.

Historic structure. Any structure that is determined eligible for the exception to the flood hazard area requirements of the *Florida Building Code, Existing Building, Chapter 11 Historic Buildings*.

Letter of Map Change (LOMC). An official determination issued by FEMA that amends or revises an effective Flood Insurance Rate Map or Flood Insurance Study. Letters of Map Change include:

Letter of Map Amendment (LOMA): An amendment based on technical data showing that a property was incorrectly included in a designated special flood hazard area. A LOMA amends the current effective Flood Insurance Rate Map and establishes that a specific property, portion of a property, or structure is not located in a special flood hazard area.

Letter of Map Revision (LOMR): A revision based on technical data that may show changes to flood zones, flood elevations, special flood hazard area boundaries and floodway delineations, and other planimetric features.

Letter of Map Revision Based on Fill (LOMR-F): A determination that a structure or parcel of land has been elevated by fill above the base flood elevation and is, therefore, no longer located within the special flood hazard area. In order to qualify for this determination, the fill must have been permitted and placed in accordance with the community's floodplain management regulations.

Conditional Letter of Map Revision (CLOMR): A formal review and comment as to whether a proposed flood protection project or other project complies with the minimum NFIP requirements for such projects with respect to delineation of special flood hazard areas. A CLOMR does not revise the effective Flood Insurance Rate Map or Flood Insurance Study; upon submission and approval of certified as-built documentation, a Letter of Map Revision may be issued by FEMA to revise the effective FIRM.

Light-duty truck. As defined in 40 C.F.R. 86.082-2, any motor vehicle rated at 8,500 pounds Gross Vehicular Weight Rating or less which has a vehicular curb weight of 6,000 pounds or less and which has a basic vehicle frontal area of 45 square feet or less, which is:

- 1 Designed primarily for purposes of transportation of property or is a derivation of such a vehicle, or

2. Designed primarily for transportation of persons and has a capacity of more than 12 persons; or
3. Available with special features enabling off-street or off-highway operation and use.

Lowest floor. The floor of the lowest enclosed area of a building or structure, including basement, but excluding any unfinished or flood-resistant enclosure, usable solely for vehicle parking, building access or limited storage provided that such enclosure is not built so as to render the structure in violation of the *Florida Building Code* or ASCE 24. [Also defined in FBC, B, Section 1612.2.]

Market value. The price at which a property will change hands between a willing buyer and a willing seller, neither party being under compulsion to buy or sell and both having reasonable knowledge of relevant facts. As used in this ordinance, the term refers to the market value of buildings and structures, excluding the land and other improvements on the parcel. Market value may be established by a qualified independent appraiser, Actual Cash Value (replacement cost depreciated for age and quality of construction), or tax assessment value adjusted to approximate market value by a factor provided by the Property Appraiser.

New construction. For the purposes of administration of this ordinance and the building code, structures for which the "start of construction" commenced on or after December 1, 1992 and includes any subsequent improvements to such structures.

Nonresidential. Any building or structure or portion thereof that is not classified residential in accordance with the *Florida Building Code, Building* (Residential Group R or Institutional Group I) and ASCE 24. [Also see definition in ASCE 24.]

Recreational vehicle. A vehicle, including a park trailer, which is: [Defined in section 320.01(b), Florida Statutes]

1. Built on a single chassis;
2. Four hundred (400) square feet or less when measured at the largest horizontal projection;
3. Designed to be self-propelled or permanently towable by a light-duty truck; and
4. Designed primarily not for use as a permanent dwelling but as temporary living quarters for recreational, camping, travel, or seasonal use.

Special flood hazard area. An area in the floodplain subject to a 1 percent or greater chance of flooding in any given year. Special flood hazard areas are shown on FIRMs as Zone A, AO, A1-A30, AE, A99, AH, V1-V30, VE or V. The term also includes areas shown on other flood hazard maps, if such maps are adopted by the Village of Biscayne Park or otherwise legally designated. [Also defined in FBC, B Section 1612.2.]

Start of construction. The date of issuance for new construction and substantial improvements to existing structures, provided the actual start of construction, repair, reconstruction, rehabilitation, addition, placement, or other improvement is within 180 days of the date of the issuance. The actual start of construction means either the first placement of permanent construction of a building (including a manufactured home) on a site, such as the pouring of slab or footings, the installation of piles, the construction of columns.

Permanent construction does not include land preparation (such as clearing, grading, or filling), the installation of streets or walkways, excavation for a basement, footings, piers, or foundations, the erection of temporary forms or the installation of accessory buildings such as garages or sheds not occupied as dwelling units or not part of the main buildings. For a substantial improvement, the actual "start of construction" means the first alteration of any wall, ceiling, floor or other structural part of a building, whether or not that alteration affects the external dimensions of the building. [Also defined in FBC, B Section 1612.2.]

Substantial damage. Damage of any origin sustained by a building or structure whereby the cost of restoring the building or structure to its before-damaged condition would equal or exceed 50 percent of the market value of the building or structure before the damage occurred. [Also defined in FBC, B Section 1612.2.]

Substantial improvement. Any repair, reconstruction, rehabilitation, addition, or other improvement of a building or structure, the cost of which equals or exceeds 50 percent of the market value of the building or structure before the improvement or repair is started. If the structure has incurred "substantial damage," any repairs are considered substantial improvement regardless of the actual repair work performed. The term does not, however, include either: [Also defined in FBC, B, Section 1612.2.]

1. Any project for improvement of a building required to correct existing health, sanitary, or safety code violations identified by the building official and that are the minimum necessary to assure safe living conditions.
2. Any alteration of a historic structure provided the alteration will not preclude the structure's continued designation as a historic structure and the alteration is approved by variance issued pursuant to 6-5.12 of this ordinance.

Variance. A grant of relief from the requirements of this ordinance, or the flood load and flood resistant construction requirements of the *Florida Building Code*, which permits construction in a manner that would not otherwise be permitted by this ordinance or the *Florida Building Code*.

Watercourse. A river, creek, stream, channel or other topographic feature in, on, through, or over which water flows at least periodically.

6-5.15 Flood Resistant Development

(A) Buildings And Structures

(1) **Design and construction of buildings and structures exempt from the *Florida Building Code*.** Pursuant to Section 6-5.10(B)(1) of this ordinance, buildings, structures, and facilities that are exempt from the *Florida Building Code*, including substantial improvement or repair of substantial damage of such buildings, structures and facilities, shall be designed and constructed in accordance with the flood load and flood resistant construction requirements of ASCE 24. Structures exempt from the *Florida Building Code* that are not walled and roofed buildings shall comply with the requirements of Section 6-5.19 of this ordinance.

(2) **Buildings and structures seaward of the coastal construction control line.** If extending, in whole or in part, seaward of the coastal construction control line and also located, in whole or in part, in a flood hazard area:

(a) Buildings and structures shall be designed and constructed to comply with the more restrictive applicable requirements of the *Florida Building Code, Building* Section 3109 and Section 1612 or *Florida Building Code, Residential* Section R322.

(b) Minor structures and non-habitable major structures as defined in section 161.54, Florida Statutes, shall be designed and constructed to comply with the intent and applicable provisions of this ordinance and ASCE 24.

(B) **Subdivisions**

(1) **Minimum requirements.** Subdivision proposals, including proposals for manufactured home parks and subdivisions, shall be reviewed to determine that:

(a) Such proposals are consistent with the need to minimize flood damage and will be reasonably safe from flooding;

(b) All public utilities and facilities such as sewer, gas, electric, communications, and water systems are located and constructed to minimize or eliminate flood damage; and

(c) Adequate drainage is provided to reduce exposure to flood hazards.

(C) **Subdivision plats.** Where any portion of proposed subdivisions lies within a flood hazard area, the following shall be required:

(1) Delineation of flood hazard areas, floodway boundaries and flood zones, and design flood elevations, as appropriate, shall be shown on preliminary plats and final plats;

(2) Where the subdivision has more than 50 lots or is larger than 5 acres and base flood elevations are not included on the FIRM, the information required in Section 6-5.10(H) of this ordinance; and

(3) Compliance with the site improvement and utilities requirements of Subsection 6-5.16 of this ordinance.

6-5.16 **Site Improvements, Utilities And Limitations**

(A) **Minimum requirements.** All proposed new development shall be reviewed to determine that:

(1) Such proposals are consistent with the need to minimize flood damage and will be reasonably safe from flooding;

(2) All public utilities and facilities such as sewer, gas, electric, communications, and water systems are located and constructed to minimize or eliminate flood damage; and

(3) Adequate drainage is provided to reduce exposure to flood hazards.

(B) **Sanitary sewage facilities.** All new and replacement sanitary sewage facilities, private sewage treatment plants (including all pumping stations and collector systems), and on-site

waste disposal systems shall be designed in accordance with the standards for onsite sewage treatment and disposal systems in Chapter 64E-6, F.A.C. and ASCE 24 Chapter 7 to minimize or eliminate infiltration of floodwaters into the facilities and discharge from the facilities into flood waters, and impairment of the facilities and systems.

(C) **Water supply facilities.** All new and replacement water supply facilities shall be designed in accordance with the water well construction standards in Chapter 62-532.500, F.A.C. and ASCE 24 Chapter 7 to minimize or eliminate infiltration of floodwaters into the systems.

(D) **Limitations on sites in regulatory floodways.** Development, site improvements, and land disturbing activity involving fill or regrading shall not be authorized in the regulatory floodway unless the floodway encroachment analysis required in Section 6-5.10(I)(A) of this ordinance demonstrates that the proposed development or land disturbing activity will not result in any increase in the base flood elevation.

(E) **Limitations on placement of fill.** Subject to the limitations of this ordinance, fill shall be designed to be stable under conditions of flooding including rapid rise and rapid drawdown of floodwaters, prolonged inundation, and protection against flood-related erosion and scour. In addition to these requirements, if intended to support buildings and structures (Zone A only), fill shall comply with the requirements of the *Florida Building Code*.

6-5.17 Recreational Vehicles And Park Trailers

(A) **Temporary placement, only.** Recreational vehicles and park trailers placed temporarily in flood hazard areas shall:

- (1) Be on the site for fewer than 180 consecutive days; or
- (2) Be fully licensed and ready for highway use, which means the recreational vehicle or park model is on wheels or jacking system, is attached to the site only by quick-disconnect type utilities and security devices, and has no permanent attachments such as additions, rooms, stairs, decks and porches.

6-5.18 Tanks

(A) **Underground tanks.** Underground tanks in flood hazard areas shall be anchored to prevent flotation, collapse or lateral movement resulting from hydrodynamic and hydrostatic loads during conditions of the design flood, including the effects of buoyancy assuming the tank is empty.

(B) **Above-ground tanks, not elevated.** Above-ground tanks that do not meet the elevation requirements of Section 6-5.18 of this ordinance shall:

- (1) Be permitted in flood hazard areas (Zone A) other than coastal high hazard areas, provided the tanks are anchored or otherwise designed and constructed to prevent flotation, collapse or lateral movement resulting from hydrodynamic and hydrostatic loads during conditions of the design flood, including the effects of buoyancy assuming the tank is empty and the effects of flood-borne debris.

(C) **Above-ground tanks, elevated.** Above-ground tanks in flood hazard areas shall be attached to and elevated to or above the design flood elevation on a supporting structure that is designed to prevent flotation, collapse or lateral movement during conditions of the design flood.

1 Tank-supporting structures shall meet the foundation requirements of the applicable flood hazard
2 area.

3
4 (D) **Tank inlets and vents.** Tank inlets, fill openings, outlets and vents shall be:

5 (1) At or above the design flood elevation or fitted with covers designed
6 to prevent the inflow of floodwater or outflow of the contents of the tanks during
7 conditions of the design flood; and

8 (2) Anchored to prevent lateral movement resulting from hydrodynamic
9 and hydrostatic loads, including the effects of buoyancy, during conditions of the
10 design flood.

11
12 **6-5.19 Other Development**

13
14 (A) **General requirements for other development.** All development, including man-
15 made changes to improved or unimproved real estate for which specific provisions are not specified
16 in this ordinance or the *Florida Building Code*, shall:

17 (1) Be located and constructed to minimize flood damage;

18 (2) Meet the limitations of Section 6-5.16(D) of this ordinance if located in a
19 regulated floodway;

20 (3) Be anchored to prevent flotation, collapse or lateral movement resulting from
21 hydrostatic loads, including the effects of buoyancy, during conditions of the design
22 flood;

23 (4) Be constructed of flood damage-resistant materials; and

24 (5) Have mechanical, plumbing, and electrical systems above the design flood
25 elevation, except that minimum electric service required to address life safety and
26 electric code requirements is permitted below the design flood elevation provided it
27 conforms to the provisions of the electrical part of building code for wet locations.

28
29 (B) **Fences in regulated floodways.** Fences in regulated floodways that have the
30 potential to block the passage of floodwaters, such as stockade fences and wire mesh fences, shall
31 meet the limitations of Section 6-5.15(D) of this ordinance.

32
33 (C) **Retaining walls, sidewalks and driveways in regulated floodways.** Retaining
34 walls and sidewalks and driveways that involve the placement of fill in regulated floodways shall
35 meet the limitations of Section 6-5.15(D) of this ordinance.

36
37 (D) **Roads and watercourse crossings in regulated floodways.** Roads and
38 watercourse crossings, including roads, bridges, culverts, low-water crossings and similar means for
39 vehicles or pedestrians to travel from one side of a watercourse to the other side, that encroach into
40 regulated floodways shall meet the limitations of Section 6-5.15(D) of this ordinance. Alteration of a
41 watercourse that is part of a road or watercourse crossing shall meet the requirements of 6-5.10(I)(3)
42 of this ordinance.

43 * * *

Section 3. The following are administrative amendments to the *Florida Building Code, Building*.

Sec. 107.6.1, Florida Building Code, Building

107.6.1 Building permits issued on the basis of an affidavit. Pursuant to the requirements of federal regulation (44 C.F.R. Sections 59 and 60) for the National Flood Insurance Program, the authority granted to the Building Official to issue permits, to rely on inspections, and to accept plans and construction documents on the basis of affidavits and plans submitted pursuant to 105.14 and Section 107.6, shall not extend to the flood load and flood resistance construction requirements of the *Florida Building Code*.

* * *

Sec. 117, Florida Building Code, Building

117 VARIANCES IN FLOOD HAZARD AREAS

117.1 Flood hazard areas. Pursuant to Section 553.73(5), Florida Statutes, the variance procedures adopted in the local floodplain management ordinance shall apply to requests submitted to the Floodplain Administrator for variances to the provisions of Section 1612.4 of the Florida Building Code, Building or, as applicable, the provisions of R322 of the Florida Building Code, Residential. This section shall not apply to Section 3109 of the *Florida Building Code, Building*.

* * *

Section 4. The following is the previous version of Chapter 6.5 which is to be deleted in its entirety.

Chapter 6.5 FLOOD DAMAGE PREVENTION

~~ARTICLE I. IN GENERAL~~

~~**Sec. 6-5.1. Statutory authorization; findings of fact; purpose; and objectives.**~~

~~(A) Statutory authorization.~~

~~The Legislature of the State of Florida has authorized and delegated in Chapter 166, Florida Statutes, the responsibility of local government units to adopt regulations designed to promote the public health, safety, and general welfare of its citizenry.~~

~~(B) Findings of fact.~~

~~(1) The flood hazard areas of the Village of Biscayne Park are subject to periodic inundation, which results in loss of life, property, health and safety hazards, disruption of commerce and~~

1 ~~governmental services, extraordinary public expenditures for flood protection and relief, and~~
2 ~~impairment of the tax base, all of which adversely affect the public health, safety and general~~
3 ~~welfare.~~

4
5 ~~(2) — These flood losses are caused by the cumulative effect of obstructions in floodplains~~
6 ~~causing increases in flood heights and velocities, and by the occupancy in flood hazard areas by~~
7 ~~uses vulnerable to floods or hazardous to other lands which are inadequately elevated, flood-~~
8 ~~proofed, or otherwise unprotected from flood damages.~~

9
10 **(C) — Statement of purpose.**

11
12 ~~It is the purpose of this chapter to save lives, promote the public health, safety and general~~
13 ~~welfare, and minimize public and private losses due to flood conditions in specific areas by~~
14 ~~provisions designed to:~~

15
16 ~~(1) — Restrict or prohibit uses which are dangerous to life, health, safety and property due to~~
17 ~~water or erosion hazards, which result in damaging increases in erosion or in flood heights and~~
18 ~~velocities;~~

19
20 ~~(2) — Require that uses vulnerable to floods including facilities which serve such uses be~~
21 ~~protected against flood damage throughout their intended life span;~~

22
23 ~~(3) — Control the alteration of natural floodplains, stream channels, and natural protective~~
24 ~~barriers which are involved in the accommodation of flood waters;~~

25
26 ~~(4) — Control filling, grading, dredging and other development which may increase erosion or~~
27 ~~flood damage; and~~

28
29 ~~(5) — Prevent or regulate the construction of flood barriers which will unnaturally divert~~
30 ~~floodwaters or which may increase flood hazards to other lands.~~

31
32 **(D) — Objectives.**

33
34 ~~The objectives of this chapter are to:~~

35
36 ~~(1) — Protect human life, health and to eliminate or minimize property damage;~~

37
38 ~~(2) — Minimize expenditure of public money for costly flood control projects;~~

39
40 ~~(3) — Minimize the need for rescue and relief efforts associated with flooding and generally~~
41 ~~undertaken at the expense of the general public;~~

42
43 ~~(4) — Minimize prolonged business interruptions;~~

44
45 ~~(5) — Minimize damage to public facilities and utilities such as water and gas mains, electric,~~
46 ~~telephone and sewer lines, roadways, and bridges and culverts located in floodplains;~~

(6) — ~~Maintain a stable tax base by providing for the sound use and development of flood prone areas in such a manner as to minimize flood blight areas; and~~

(7) — ~~Ensure that potential homebuyers are notified that property is in a flood hazard area.~~

Sec. 6.5-2. — Definitions.

~~— Unless specifically defined below, words or phrases used in this chapter shall be interpreted so as to give them the meaning they have in common usage and to give this chapter its most reasonable application.~~

~~**Accessory structure** (Appurtenant structure) means a structure that is located on the same parcel of property as the principal structure and the use of which is incidental to the use of the principal structure. Accessory structures should constitute a minimal investment, may not be used for human habitation, and be designed to have minimal flood damage potential. Examples of accessory structures are detached garages, carports and storage sheds.~~

~~**Appeal** means a request for a review of the Floodplain Administrator's interpretation of any provision of this chapter or a request for a variance.~~

~~**Area of shallow flooding** means a designated AO or AH Zone on the community's Flood Insurance Rate Map (FIRM) with base flood depths from one to three feet where a clearly defined channel does not exist, where the path of flooding is unpredictable and indeterminate, and where velocity flow may be evident. Such flooding is characterized by ponding or sheet flow.~~

~~**Area of special flood hazard** is the land in the floodplain within a community subject to a one percent or greater chance of flooding in any given year. This term is synonymous with the phrase "special flood hazard area."~~

~~**Base flood** means the flood having a one percent chance of being equaled or exceeded in any given year (also called the "100 year flood" and the "regulatory flood"). Base flood is the term used throughout this chapter.~~

~~**Base Flood Elevation** means the water surface elevation associated with the base flood.~~

~~**Basement** means any portion of a building having its floor sub grade (below ground level) on all sides.~~

~~**Building** — see Structure.~~

~~**Datum** A reference surface used to ensure that all elevation records are properly related. The current national datum is the National Geodetic Vertical Datum (NGVD) of 1929, which is expressed in relation to mean sea level, or the North American Vertical Datum (NAVD) of 1988.~~

1 ~~**Development** means any man made change to improved or unimproved real estate, including,~~
2 ~~but not limited to buildings or other structures, mining, dredging, filling, grading, paving,~~
3 ~~excavating, drilling operations, or storage of materials or equipment.~~

4
5 ~~**Elevated building** means a non-basement building built to have the lowest floor elevated above~~
6 ~~the ground level by foundation walls, posts, piers, columns, pilings, or shear walls.~~

7
8 ~~**Encroachment** means the advance or infringement of uses, plant growth, fill, excavation,~~
9 ~~buildings, permanent structures or development into a floodplain, which may impede or alter the~~
10 ~~flow capacity of a floodplain.~~

11
12 ~~**Existing Construction** means, for the purposes of floodplain management, structures for which~~
13 ~~“the start of construction” commenced before September 29, 1972. Existing construction~~
14 ~~means, for the purposes of determining rates structures for which the “start of construction”~~
15 ~~commenced before January 1, 1975. This term may also be referred to as “existing structures”.~~

16
17 ~~**Flood or flooding** means:~~

18
19 ~~(a) — A general and temporary condition of partial or complete inundation of normally dry land~~
20 ~~areas from:~~

21
22 ~~(1) — The overflow of inland or tidal waters.~~

23
24 ~~(2) — The unusual and rapid accumulation or runoff of surface waters from any source.~~

25
26 ~~—— (3) — Mudslides (i.e., mudflows) which are proximately caused by flooding as defined~~
27 ~~in paragraph (a) (2) of this definition and are akin to a river of liquid and flowing mud on the~~
28 ~~surface of normally dry land areas, as when earth is carried by a current of water and deposited~~
29 ~~along the path of the current.~~

30
31 ~~(b) — The collapse or subsidence of land along a shore of a lake or other body of water as the~~
32 ~~result of erosion or undermining caused by waves or currents of water exceeding anticipated~~
33 ~~cyclical levels or suddenly caused by an unusually high water level in a natural body of water,~~
34 ~~accompanied by a severe storm or by an unanticipated force of nature, such as a flash flood or an~~
35 ~~abnormal tidal surge or by some similarly unusual and unforeseeable event which results in~~
36 ~~flooding as defined in paragraph (a) (1) of this definition.~~

37
38 ~~**Flood Boundary and Floodway Map (FBFM)** means the official map of the community on~~
39 ~~which the Federal Emergency Management Agency (FEMA) has delineated the areas of special~~
40 ~~flood hazard and regulatory floodways.~~

41
42 ~~**Flood Hazard Boundary Map (FHBM)** means an official map of the community, issued by~~
43 ~~FEMA, where the boundaries of the areas of special flood hazard have been identified as only~~
44 ~~Approximate Zone A.~~

1 ~~**Flood Insurance Rate Map (FIRM)** means an official map of the community, issued by~~
2 ~~FEMA, which delineated both the areas of special flood hazard and the risk premium zones~~
3 ~~applicable to the community.~~

4
5 ~~**Flood Insurance Study (FIS)** means the official hydrology and hydraulics report provided by~~
6 ~~FEMA. The study contains an examination, evaluation, and determination of flood hazards, and,~~
7 ~~if appropriate, corresponding water surface elevations, or an examination, evaluation, and~~
8 ~~determination of mudslide (i.e., mudflow) and other flood-related erosion hazards. The study~~
9 ~~may also contain flood profiles, as well as the FIRM, FHBH (where applicable), and other~~
10 ~~related data and information.~~

11
12 ~~**Floodplain** means any land area susceptible to being inundated by water from any source (see~~
13 ~~definition of "flooding").~~

14
15 ~~**Floodplain management** means the operation of an overall program of corrective and~~
16 ~~preventive measures for reducing flood damage and preserving and enhancing, where possible,~~
17 ~~natural resources in the floodplain, including but not limited to emergency preparedness plans,~~
18 ~~flood control works, floodplain management regulations, and open space plans.~~

19
20 ~~**Floodplain Administrator** is the individual appointed to administer and enforce the floodplain~~
21 ~~management regulations of the community.~~

22
23 ~~**Floodplain management regulations** means this chapter and other zoning ordinances,~~
24 ~~subdivision regulations, building codes, health regulations, special purpose ordinances (such as~~
25 ~~floodplain ordinance, grading ordinance, and erosion control ordinance), and other applications~~
26 ~~of police power which control development in flood prone areas. This term describes Federal,~~
27 ~~State of Florida, or local regulations in any combination thereof, which provide standards for~~
28 ~~preventing and reducing flood loss and damage.~~

29
30 ~~**Floodproofing** means any combination of structural and non-structural additions, changes, or~~
31 ~~adjustments to structures, which reduce or eliminate flood damage to real estate or improved real~~
32 ~~property, water and sanitary facilities, structures and their contents.~~

33
34 ~~**Floodway** means the channel of a river or other watercourse and the adjacent land areas that~~
35 ~~must be reserved in order to discharge the base flood without cumulatively increasing the water~~
36 ~~surface elevation more than a designated height.~~

37
38 ~~**Floodway fringe** means that area of the one percent (base or 100-year) floodplain on either side~~
39 ~~of the regulatory floodway.~~

40
41 ~~**Freeboard** means the additional height, usually expressed as a factor of safety in feet, above a~~
42 ~~flood level for purposes of floodplain management. Freeboard tends to compensate for many~~
43 ~~unknown factors, such as wave action, blockage of bridge or culvert openings, and hydrological~~
44 ~~effect of urbanization of the watershed, which could contribute to flood heights greater than the~~
45 ~~heights calculated for a selected frequency flood and floodway conditions.~~

1 **Free of Obstruction** means any type of lower area enclosure or other construction element will
2 not obstruct the flow of velocity water and wave action beneath the lowest horizontal structural
3 member of the lowest floor of an elevated building during a base flood event.
4

5 **Functionally dependent use** means a use that cannot be used for its intended purpose unless it is
6 located or carried out in close proximity to water, such as a docking or port facility necessary for
7 the loading and unloading of cargo or passengers, shipbuilding or ship repair. The term does not
8 include long term storage, manufacture, sales, or service facilities.
9

10 **Hardship** as related to variances from this chapter means the exceptional difficulty associated
11 with the land that would result from a failure to grant the requested variance. The community
12 requires that the variance is exceptional, unusual, and peculiar to the property involved. Mere
13 economic or financial hardship alone is not exceptional. Inconvenience, aesthetic considerations,
14 physical handicaps, personal preferences, or the disapproval of one's neighbors likewise cannot,
15 as a rule, qualify as an exceptional hardship. All of these problems can be resolved through
16 other means without granting a variance, even if the alternative is more expensive, or requires
17 the property owner to build elsewhere or put the parcel to a different use than originally
18 intended.
19

20 **Highest adjacent grade** means the highest natural elevation of the ground surface, prior to the
21 start of construction, next to the proposed walls of a structure.
22

23 **Historic Structure** means any structure that is:
24

25 a) Listed individually in the National Register of Historic Places (a listing maintained by the
26 Department of Interior) or preliminarily determined by the Secretary of the Interior as meeting
27 the requirements for individual listing on the National Register;
28

29 b) Certified or preliminarily determined by the Secretary of the Interior as contributing to the
30 historical significance of a registered historic or a district preliminarily determined by the
31 Secretary to qualify as a registered historic district;
32

33 c) Individually listed on the Florida inventory of historic places, which has been approved by
34 the Secretary of the Interior; or
35

36 d) Individually listed on a local inventory of historic places in communities with historic
37 preservation programs that have been certified either:
38

39 1. By the approved Florida program as determined by the Secretary of the Interior, or
40

41 2. Directly by the Secretary of the Interior.
42

43 **Lowest adjacent grade** means the lowest elevation, after the completion of construction, of the
44 ground, sidewalk, patio, deck support, or basement entryway immediately next to the structure.
45

46 **Lowest floor** means the lowest floor of the lowest enclosed area (including basement). An
47 unfinished or flood resistant enclosure, used solely for parking of vehicles, building access, or

1 storage, in an area other than a basement, is not considered a building's lowest floor, provided
2 that such enclosure is not built so as to render the structure in violation of the applicable non-
3 elevation design standards of this chapter.
4

5 ~~Market value means the building value, which is the property value excluding the land value~~
6 ~~and that of the detached accessory structures and other improvements on site (as agreed to~~
7 ~~between a willing buyer and seller) as established by what the local real estate market will bear.~~
8 ~~Market value can be established by an independent certified appraisal (other than a limited or~~
9 ~~curbside appraisal, or one based on income approach), Actual Cash Value (replacement cost~~
10 ~~depreciated for age and quality of construction of building), or adjusted tax assessed values as~~
11 ~~determined by the Miami Dade County Property Appraisers Records.~~
12

13 ~~Mean Sea Level means the average height of the sea for all stages of the tide. It is used as a~~
14 ~~reference for establishing various elevations within the floodplain. For purposes of this chapter,~~
15 ~~the term is synonymous with National Geodetic Vertical Datum (NGVD) of 1929, or North~~
16 ~~American Vertical Datum (NAVD) of 1988.~~
17

18 ~~National Geodetic Vertical Datum (NGVD) of 1929 means a vertical control used as a~~
19 ~~reference for establishing varying elevations within the floodplain.~~
20

21 ~~New Construction means, for floodplain management purposes, any structure for which the~~
22 ~~"start of construction" commenced on or after September 29, 1972. The term also includes any~~
23 ~~subsequent improvements to such structures. For flood insurance rates, structures for which the~~
24 ~~start of construction commenced on or after December 31, 1974, and includes any subsequent~~
25 ~~improvements to such structures.~~
26

27
28 ~~North American Vertical Datum (NAVD) of 1988 means a vertical control used as a reference~~
29 ~~for establishing varying elevations within the floodplain.~~
30

31 ~~Principally above ground means that at least 51 percent of the actual cash value of the structure~~
32 ~~is above ground.~~
33

34 ~~Program deficiency means a defect in the community's floodplain management regulations or~~
35 ~~administrative procedures that impairs effective implementation of those floodplain management~~
36 ~~regulations or of the standards required by the National Flood Insurance Program.~~
37

38 ~~Public safety and nuisance means anything which is injurious to safety or health of the entire~~
39 ~~community or a neighborhood, or any considerable number of persons, or unlawfully obstructs~~
40 ~~the free passage or use, in the customary manner, of any navigable lake, or river, bay, stream,~~
41 ~~canal, or basin.~~
42

43 ~~Reasonably safe from flooding means base flood waters will not inundate the land or damage~~
44 ~~structures to be removed from the SFHA and that any subsurface waters related to the base flood~~
45 ~~will not damage existing or proposed buildings.~~
46

47 ~~Recreational vehicle means a vehicle that is:~~

1
2 a) ~~— Built on a single chassis;~~

3
4 b) ~~— 400 square feet or less when measured at the largest horizontal projection;~~

5
6 e) ~~— Designed to be self propelled or permanently towable by a light duty truck; and~~

7
8 d) ~~— Designed primarily not for use as a permanent dwelling but as temporary living quarters~~
9 ~~for recreational, camping, travel, or seasonal use.~~

10
11 ~~**Regulatory floodway** means the channel of a river or other watercourse and the adjacent land~~
12 ~~areas that must be reserved in order to discharge the base flood without cumulatively increasing~~
13 ~~the water surface elevation more than a designated height.~~

14
15 ~~**Remedy a deficiency or violation** means to bring the regulation, procedure, structure or other~~
16 ~~development into compliance with State of Florida, Federal, or local floodplain management~~
17 ~~regulations; or if this is not possible, to reduce the impacts of its noncompliance. Ways the~~
18 ~~impacts may be reduced include protecting the structure or other affected development from~~
19 ~~flood damages, implementing the enforcement provisions of this chapter or otherwise deterring~~
20 ~~future similar violations, or reducing Federal financial exposure with regard to the structure or~~
21 ~~other development.~~

22
23 ~~**Repetitive loss** means flood related damage sustained by a structure on two separate occasions~~
24 ~~during a 10 year period for which the cost of repairs at the time of each such flood event, on the~~
25 ~~average, equals or exceeds 25 percent of the market value of the structure before the damage~~
26 ~~occurred.~~

27
28 ~~**Riverine** means relating to, formed by, or resembling a river (including tributaries), stream,~~
29 ~~brook, etc.~~

30
31 ~~**Shallow flooding** — see area of shallow flooding.~~

32
33 ~~**Special flood hazard area** — see area of special flood hazard.~~

34
35 ~~**Start of construction** means, for other than new construction and substantial improvements~~
36 ~~under the Coastal Barrier Resources Act P. L. 97 348, includes substantial improvement, and~~
37 ~~means the date the building permit was issued, provided the actual start of construction, repair,~~
38 ~~reconstruction, or improvement was within 180 days of the permit date. The actual start means~~
39 ~~the first placement of permanent construction of a building on a site, such as the pouring of slabs~~
40 ~~or footings, installation of piles, or construction of columns. Permanent construction does not~~
41 ~~include land preparation, such as clearing, grading and filling; nor does it include the installation~~
42 ~~of streets and/or walkways; nor does it include excavation for a basement, footings, piers or~~
43 ~~foundations or the erection of temporary forms; nor does it include the installation on the~~
44 ~~property of accessory buildings, such as garages or sheds not occupied as dwelling units or not~~
45 ~~part of the main building. For substantial improvement, the actual start of construction means~~
46 ~~the first alteration of any wall, ceiling, floor, or other structural part of a building, whether or not~~
47 ~~that alteration affects the external dimensions of the building.~~

Structure means, for floodplain management purposes, a walled and roofed building, including gas or liquid storage tank that is principally above ground.

Substantial damage means damage of any origin sustained by a structure whereby the cost of restoring the structure to its before damaged condition would equal or exceed 50 percent of the market value of the structure before the damage occurred. This term also includes "repetitive loss" structures as defined herein.

Substantial improvement means any combination of additions, rehabilitation, reconstruction, alteration, or other improvements to a structure, taking place during a one year period in all zones, in which the cumulative cost equals or exceeds 50 percent of the market value of the structure. The market value of the structure shall be the appraised value of the structure prior to the start of the initial work.

"Substantial Improvement" is considered to occur when the first alteration of any wall, ceiling, floor, or other structural part of the building commences, whether or not that alteration affects the external dimensions of the structure. This term includes structures which incur substantial damage regardless of actual work performed. The term does not include either:

- (1) Any project for improvement of a structure required to correct existing violations of State or local health, sanitary or safety code specifications which have been identified by the local Building Official and which are the minimum necessary to assure safe living conditions;
- (2) Any alteration of a historic structure, provided that the alteration will not preclude the structure's continued designation as a historic structure for which a variance has been granted pursuant to this article; or
- (3) Repairs for damage from any origin which are determined to be less than substantial damage.

Variance is a grant of relief from the requirements of this chapter.

Violation means the failure of a structure or other development to be fully compliant with the requirements of this chapter. A structure or other development without the elevation certificate, other certifications, or other evidence of compliance required in this chapter is presumed to be in violation until such time as that documentation is provided.

Watercourse means a lake, river, creek, stream, wash, channel or other topographic feature on or over which waters flow at least periodically. Watercourse includes specifically designated areas in which substantial flood damage may occur.

~~Water surface elevation means the height, in relation to the National Geodetic Vertical Datum (NGVD) of 1929 or the North American Vertical Datum (NAVD) of 1988, of floods of various magnitudes and frequencies in the floodplains of coastal or riverine areas.~~

~~Sec. 6.5.3. General provisions.~~

~~(A) Lands to which this chapter applies.~~

~~———— This chapter shall apply to all areas of special flood hazard within the jurisdiction of the Village of Biscayne Park. The Flood Zones applicable to the Village are the AE and X Zones.~~

~~(B) Basis for establishing the areas of special flood hazard.~~

~~———— The areas of special flood hazard identified by the Federal Emergency Management Agency in the Flood Insurance Study (FIS) for the Village of Biscayne Park, dated October 6, 2009, with the accompanying maps dated September 11, 2009 (Revised) and other supporting data, and any subsequent revisions thereto, are adopted by reference and declared to be a part of this chapter. The Flood Insurance Study and Flood Insurance Rate Maps consisting of Map Numbers 12086C0139L, 12806C0143L and 12086C0306L are on file at the Village of Biscayne Park Village Hall.~~

~~(C) Requirement to submit new technical data.~~

~~As provided in Title 44 Code of Federal Regulations, Subpart 65.3, the Village's base flood elevations may increase or decrease resulting from physical changes affecting flooding conditions. As soon as practicable, but not later than six months after the date such information becomes available, the Village shall notify FEMA through the Administrator of the changes by submitting technical or scientific data in accordance with this part. Such a submission is necessary so that upon confirmation of those physical changes affecting flooding conditions, risk premium rates and flood plain management requirements will be based upon current data.~~

~~(D) Designation of floodplain administrator.~~

~~———— The Village Commission of the Village of Biscayne Park, Florida, hereby appoints the Village Building Official to administer and implement the provisions of this chapter and is herein referred to as the Floodplain Administrator.~~

~~(E) Establishment of development permit.~~

~~———— A development permit shall be required in conformance with the provisions of this chapter prior to the commencement of any development activities.~~

~~(F) Compliance.~~

~~———— No structure or land shall hereafter be located, extended, converted or structurally altered without full compliance with the terms of this chapter and other applicable regulations.~~

~~(G) Abrogation and greater restrictions.~~

1 ~~—— This chapter is not intended to repeal, abrogate, or impair any existing easements,~~
2 ~~covenants, or deed restrictions. However, where this chapter and another conflict or overlap,~~
3 ~~whichever imposes the more stringent restrictions shall prevail.~~

4
5 **~~(H) Interpretation.~~**

6
7 ~~—— In the interpretation and application of this chapter all provisions shall be:~~

8
9 ~~(1) Considered as minimum requirements;~~

10
11 ~~(2) Liberally construed in favor of the governing body; and~~

12
13 ~~(3) Deemed neither to limit nor repeal any other powers granted under State of Florida~~
14 ~~statutes.~~

15
16 **~~(I) Warning and disclaimer of liability.~~**

17
18 ~~—— The degree of flood protection required by this chapter is considered reasonable for~~
19 ~~regulatory purposes and is based on scientific and engineering consideration. Larger floods can~~
20 ~~and will occur on rare occasions. Flood heights may be increased by man-made or natural~~
21 ~~causes. This chapter does not imply that land outside the areas of special flood hazard or uses~~
22 ~~permitted within such areas will be free from flooding or flood damages. This chapter shall not~~
23 ~~create liability on the part of the Village Commission of the Village of Biscayne Park or by any~~
24 ~~officer or employee thereof for any flood damages that result from reliance on this chapter or any~~
25 ~~administrative decision lawfully made thereunder.~~

26
27 **~~(J) Penalties for violation.~~**

28
29 ~~—— Violation of the provisions of this chapter or failure to comply with any of its~~
30 ~~requirements, including violation of conditions and safeguards established in connection with~~
31 ~~grants of variance or special exceptions, shall be punishable for a non criminal violation. Any~~
32 ~~person who violates this chapter or fails to comply with any of its requirements shall, upon~~
33 ~~adjudication therefore, be fined not more than \$500, and in addition, shall pay all costs and~~
34 ~~expenses involved in the case. Each day such violation continues shall be considered a separate~~
35 ~~offense. Nothing herein contained shall prevent the Floodplain Administrator from taking such~~
36 ~~other lawful actions as are necessary to prevent or remedy any violation.~~

37
38 **~~Sec. 6.5-4. Administration.~~**

39
40 **~~(A) Permit procedures.~~**

41
42 ~~—— Application for a Development Permit shall be made to the Floodplain Administrator on~~
43 ~~forms furnished by him or her prior to any development activities, and may include, but not be~~
44 ~~limited to, the following plans in duplicate drawn to scale showing the nature, location,~~
45 ~~dimensions, and elevations of the area in question; existing and proposed structures, earthen fill,~~
46 ~~storage of materials or equipment, drainage facilities, and the location of the foregoing.~~
47 ~~Specifically, the following information is required:~~

1
2 (1) ~~Application Stage:~~

3
4 a) ~~Elevation in relation to mean sea level of the proposed lowest floor (including~~
5 ~~basement) of all buildings;~~

6
7 b) ~~Elevation in relation to mean sea level to which any non-residential building will~~
8 ~~be flood proofed;~~

9
10 c) ~~Certificate from a registered professional engineer or architect that the non-~~
11 ~~residential flood proofed building will meet the flood proofing criteria in Section 6.5 4(A)(2)~~
12 ~~and Section 6.5 5(B)(2);~~

13
14 d) ~~Description of the extent to which any watercourse will be altered or relocated as~~
15 ~~a result of proposed development; and~~

16
17 (2) ~~Construction Stage:~~

18
19 ~~Upon placement of the lowest floor, or flood proofing by whatever construction means, or~~
20 ~~bottom of the lowest horizontal structural member it shall be the duty of the permit holder to~~
21 ~~submit to the Floodplain Administrator a certification of the NGVD or NAVD elevation of the~~
22 ~~lowest floor or flood proofed elevation, or bottom of the lowest horizontal structural member of~~
23 ~~the lowest floor as built, in relation to mean sea level. Said certification shall be prepared by or~~
24 ~~under the direct supervision of a registered land surveyor or professional engineer and certified~~
25 ~~by same. When flood proofing is utilized for a particular building said certification shall be~~
26 ~~prepared by or under the direct supervision of a professional engineer or architect and certified~~
27 ~~by same. Any work undertaken prior to submission of the certification shall be at the permit~~
28 ~~holder's risk. The Floodplain Administrator shall review the lowest floor and flood proofing~~
29 ~~elevation survey data submitted. The permit holder immediately and prior to further progressive~~
30 ~~work being permitted to proceed shall correct violations detected by such review. Failure to~~
31 ~~submit the survey or failure to make said corrections required hereby shall be cause to issue a~~
32 ~~stop work order for the project.~~

33
34 **(B) ~~Duties and responsibilities of the floodplain administrator.~~**

35
36 ~~_____ Duties of the Administrator shall include, but are not be limited to:~~

37
38 (1) ~~Review permits to assure sites are reasonably safe from flooding;~~

39
40 (2) ~~Review all development permits to assure that the permit requirements of this chapter~~
41 ~~have been satisfied;~~

42
43 (3) ~~Require copies of additional Federal, State of Florida, or local permits, especially as they~~
44 ~~relate to Chapters 161.053; 320.8249; 320.8359; 373.036; 380.05; 381.0065; and 553, Part IV,~~
45 ~~Florida Statutes, be submitted along with the development permit application and maintain such~~
46 ~~permits on file with the development permit;~~

1 ~~(4) — Notify adjacent communities, the Florida Department of Economic Opportunity Division~~
2 ~~of Emergency Management — NFIP Coordinating Office, South Florida Water Management~~
3 ~~District, the Federal Emergency Management Agency, and other Federal and/or State of Florida~~
4 ~~agencies with statutory or regulatory authority prior to any alteration or relocation of a~~
5 ~~watercourse;~~

6
7 ~~(5) — Assure that the flood carrying capacity within the altered or relocated portion of any~~
8 ~~watercourse is maintained;~~

9
10 ~~(6) — Verify and record the actual elevation (in relation to mean sea level) of the lowest floor~~
11 ~~(A Zones) of all new and substantially improved buildings, in accordance with Section 6.5~~
12 ~~5(B)(1) and (2) and Section E (2), respectively;~~

13
14 ~~(7) — Verify and record the actual elevation (in relation to mean sea level) to which the new~~
15 ~~and substantially improved buildings have been flood proofed, in accordance with Section 6.5~~
16 ~~5(B)(2);~~

17
18 ~~(8) — Review certified plans and specifications for compliance. When flood proofing is utilized~~
19 ~~for a particular building, certification shall be obtained from a registered engineer or architect~~
20 ~~certifying that all areas of the building, together with attendant utilities and sanitary facilities,~~
21 ~~below the required elevation are water tight with walls substantially impermeable to the passage~~
22 ~~of water, and use structural components having the capability of resisting hydrostatic and~~
23 ~~hydrodynamic loads and the effects of buoyancy in compliance with Section 6.5 5(B)(2) of this~~
24 ~~chapter;~~

25
26 ~~(9) — Interpret the exact location of boundaries of the areas of special flood hazard. When~~
27 ~~there appears to be a conflict between a mapped boundary and actual field conditions, the~~
28 ~~Floodplain Administrator shall make the necessary interpretation. The person contesting the~~
29 ~~location of the boundary shall be given a reasonable opportunity to appeal the interpretation as~~
30 ~~provided in this Section;~~

31
32 ~~(10) — When base flood elevation data and floodway data have not been provided in accordance~~
33 ~~with Section 6.5 3(B), the Floodplain Administrator shall obtain, review and reasonably utilize~~
34 ~~any base flood elevation and floodway data available from a Federal, State of Florida, or any~~
35 ~~other source, in order to administer the provisions of Section 6.5 5;~~

36
37 ~~(11) — Coordinate all change requests to the FIS, FIRM and FBFM with the requester, State of~~
38 ~~Florida, and FEMA, and~~

39
40 ~~(12) — Where Base Flood Elevation is utilized, obtain and maintain records of lowest floor and~~
41 ~~floodproofing elevations for new construction and substantial improvements in accordance with~~
42 ~~Section 6.5 5(B)(1) and (2), respectively.~~

43
44 **Sec. 6.5-5. — Provisions for flood hazard.**

45
46 **(A) — General standards.**
47

~~The Village is comprised of the following Flood Zones: AE and X. In all areas of special flood hazard, all development sites including new construction and substantial improvements shall be reasonably safe from flooding, and meet the following provisions:~~

~~(1) New construction and substantial improvements shall be designed or modified and adequately anchored to prevent flotation, collapse, and lateral movement of the structure resulting from hydrodynamic and hydrostatic loads, including the effects of buoyancy;~~

~~(2) New construction and substantial improvements shall be constructed with materials and utility equipment resistant to flood damage;~~

~~(3) New construction and substantial improvements shall be constructed by methods and practices that minimize flood damage;~~

~~(4) Electrical, heating, ventilation, plumbing, air conditioning equipment and other service facilities, including duct work, shall be designed and/or located so as to prevent water from entering or accumulating within the components during conditions of flooding;~~

~~(5) New and replacement water supply systems shall be designed to minimize or eliminate infiltration of flood waters into the systems;~~

~~(6) New and replacement sanitary sewage systems shall be designed to minimize or eliminate infiltration of flood waters into the systems and discharges from the systems into flood waters;~~

~~(7) On site waste disposal systems shall be located and constructed to avoid impairment to them or contamination from them during flooding;~~

~~(8) Any alteration, repair, reconstruction or improvements to a building that is in compliance with the provisions of this chapter shall meet the requirements of "new construction" as contained in this chapter;~~

~~(9) Any alteration, repair, reconstruction or improvements to a building that is not in compliance with the provisions of this chapter, shall be undertaken only if said non conformity is not furthered, extended, or replaced;~~

~~(10) All applicable additional Federal, State of Florida, and local permits shall be obtained and submitted to the Floodplain Administrator along with the application for development permit. Copies of such permits shall be maintained on file with the development permit. State of Florida permits may include, but not be limited to, the following:~~

~~(a) South Florida Water Management District: in accordance with Chapter 373.036 Florida Statutes, Section (2) (a) Flood Protection and Floodplain Management;~~

~~(b) Department of Economic Opportunity [in accordance with Section 380.05, Florida Statutes Areas of Critical State Concern, and Chapter 553, Part IV, Florida Statutes, Florida Building Code];~~

~~(e) — Department of Health: in accordance with Section 381.0065, Florida Statutes — Onsite Sewage Treatment and Disposal Systems; and~~

~~(11) — Standards for Subdivision Proposals and other new Proposed Development:~~

~~(a) — Such proposals shall be consistent with the need to minimize flood damage;~~

~~(b) — Such shall have public utilities and facilities such as sewer, gas, electrical, and water systems located and constructed to minimize or eliminate flood damage; and~~

~~(c) — Such proposals shall have adequate drainage provided to reduce exposure to flood hazards.~~

~~(12) — When proposed new construction and substantial improvements are partially located in an area of special flood hazard, the entire structure shall meet the standards for new construction.~~

~~(13) — When proposed new construction and substantial improvements are located in multiple flood hazard risk zones or in a flood hazard risk zone with multiple base flood elevations, the entire structure shall meet the standards for the most hazardous flood hazard risk zone and the highest base flood elevation.~~

~~(B) — Specific standards.~~

~~—— In all A Zones where base flood elevation data have been provided (Zone AE within the Village), as set forth in Section 6.5 3(B), the following provisions, in addition to those set forth in Section 6.5 5(A), shall apply:~~

~~(1) — *Residential Construction.* All new construction and substantial improvement of any residential building (including manufactured home) shall have the lowest floor, including basement, elevated to no lower than one foot above the base flood elevation. Should solid foundation perimeter walls be used to elevate a structure, there must be a minimum of two openings on different sides of each enclosed area sufficient to facilitate automatic equalization of flood hydrostatic forces in accordance with standards of Section 6.5 5(B)(3).~~

~~(2) — *Non-Residential Construction.* All new construction and substantial improvement of any commercial, industrial, or non-residential building shall have the lowest floor, including basement, elevated to no lower than one foot above the base flood elevation. All buildings located in A Zones may be flood proofed, in lieu of being elevated, provided that all areas of the building components, together with attendant utilities and sanitary facilities, below the base flood elevation plus one foot are water tight with walls substantially impermeable to the passage of water, and use structural components having the capability of resisting hydrostatic and hydrodynamic loads and the effects of buoyancy. A registered professional engineer or architect shall certify that the standards of this subsection are satisfied using the FEMA Floodproofing Certificate. Such certification along with the corresponding engineering data, and the operational and maintenance plans shall be provided to the Floodplain Administrator.~~

1 ~~(3) — Enclosures below the Lowest Floor. New construction and substantial improvements that~~
2 ~~include fully enclosed areas formed by foundation and other exterior walls below the lowest~~
3 ~~floor shall be designed to preclude finished living space and designed to allow for the entry and~~
4 ~~exit of floodwaters to automatically equalize hydrostatic flood forces on exterior walls.~~

5
6 ~~(a) — Designs for complying with this requirement must either be certified by a~~
7 ~~professional engineer or architect or meet or exceed the following minimum criteria:~~

8
9 ~~— (i) — Provide a minimum of two openings on different sides of each enclosed area~~
10 ~~having a total net area of not less than one square inch for every square foot of enclosed area~~
11 ~~subject to flooding;~~

12 ~~— (ii) — The bottom of all openings shall be no higher than one foot above adjacent~~
13 ~~interior grade (which must be equal to or higher in elevation than the adjacent exterior grade);~~
14 ~~and~~

15 ~~— (iii) — Openings may be equipped with screens, louvers, valves, or other coverings or~~
16 ~~devices provided they provide the required net area of the openings and permit the automatic~~
17 ~~flow of floodwaters in both directions.~~

18
19 ~~(b) — Fully enclosed areas below the lowest floor shall solely be used for parking of~~
20 ~~vehicles, storage, and building access. Access to the enclosed area shall be minimum necessary~~
21 ~~to allow for parking of vehicles (garage door), limited storage of maintenance equipment used in~~
22 ~~connection with the premises (standard exterior door), or entry to the living area (stairway or~~
23 ~~elevator); and~~

24
25 ~~(c) — The interior portion of such enclosed area shall not be finished or partitioned into~~
26 ~~separate rooms.~~

27
28 ~~(4) — Standards for Recreational Vehicles~~

29
30 ~~(a) — All recreational vehicles must either:~~

31
32 ~~(i) — Be on the site for fewer than 180 consecutive days,~~

33
34 ~~(ii) — Be fully licensed and ready for highway use (a recreational vehicle is ready for~~
35 ~~highway use if it is on its wheels or jacking system, is attached to the site only by quick~~
36 ~~disconnect type utilities and security devices and has no permanently attached additions);~~
37 ~~or~~

38
39 ~~(iii) — Meet all the requirements for new construction, including anchoring and~~
40 ~~elevation standards in accordance with Section 6.5 5(B)(4)(a) and (b).~~

41
42 ~~(5) — Standards for waterways with established Base Flood Elevations, but without Regulatory~~
43 ~~Floodways~~

44
45 ~~Located within the areas of special flood hazard established in Section 6.5 3(B), where streams~~
46 ~~exist for which base flood elevation data has been provided by the Federal Emergency~~
47 ~~Management Agency without the delineation of the regulatory floodway (Zones AE), the~~

1 following provisions, in addition to those set forth in Section 6.5 5(B)(1) through (5), shall
2 apply:

3
4 (a) ~~Until a regulatory floodway is designated, no new construction, substantial~~
5 ~~improvements, or other development including fill shall be permitted within the areas of special~~
6 ~~flood hazard, unless it is demonstrated that the cumulative effect of the proposed development,~~
7 ~~when combined with all other existing and anticipated development will not increase the water~~
8 ~~surface elevation of the base flood more than one foot at any point within the community.~~

9
10 (b) ~~Development activities which increase the water surface elevation of the base flood by~~
11 ~~more than one foot may be allowed, provided that the developer or applicant first applies with~~
12 ~~the community's endorsement for a conditional FIRM revision, and receives the approval of~~
13 ~~the Federal Emergency Management Agency (FEMA).~~

14
15 (6) ~~Standards for waterways with established Base Flood Elevations and Floodways.~~

16
17 ~~Located within areas of special flood hazard established in Section 6.5 3(B), are areas designated~~
18 ~~as floodways. Since the floodway is an extremely hazardous area due to the high velocity of~~
19 ~~flood waters which carry debris, potential projectiles and have significant erosion potential, the~~
20 ~~following provisions, in addition to those set forth in Section 6.5 5(B)(1) through (5), shall~~
21 ~~apply:~~

22
23 (a) ~~Prohibit encroachments, including fill, new construction, substantial improvements and~~
24 ~~other developments within the regulatory floodway unless certification (with supporting~~
25 ~~technical data) by a registered professional engineer is provided through hydrologic and~~
26 ~~hydraulic analyses performed in accordance with standard engineering practice demonstrating~~
27 ~~that encroachments would not result in any increase in flood levels during occurrence of the base~~
28 ~~flood discharge.~~

29
30 (b) ~~Development activities including new construction and substantial improvements within~~
31 ~~the regulatory floodway that increase the base flood elevation may be allowed, provided that the~~
32 ~~developer or applicant first applies with the community's endorsement for a conditional~~
33 ~~FIRM revision, and receives the approval of FEMA.~~

34
35 (c) ~~When fill is proposed, in accordance with the permit issued by the Florida Department of~~
36 ~~Health, within the regulatory floodway, the development permit shall be issued only upon~~
37 ~~demonstration by appropriate engineering analyses that the proposed fill will not increase the~~
38 ~~water surface elevation of the base flood in accordance with Section 6.5 5(B)(7)(a).~~

39
40 (C) ~~Specific standards for A-zones without base flood elevations and regulatory~~
41 ~~floodways.~~

42
43 ~~Located within the areas of special flood hazard established in Section 6.5 3(B), where~~
44 ~~there exist A Zones (AE within the Village) for which no base flood elevation data and~~
45 ~~regulatory floodway have been provided or designated by the Federal Emergency Management~~
46 ~~Agency, the following provisions shall apply:~~

1 ~~(1) — Require standards of Section 6.5 5(A).~~

2
3 ~~(2) — The Floodplain Administrator shall obtain, review, and reasonably utilize any base flood~~
4 ~~elevation and floodway data available from a Federal, State of Florida, or any other source, in~~
5 ~~order to administer the provisions of this chapter. When such data is utilized, provisions of~~
6 ~~Section 6.5 5(B) shall apply. The Floodplain Administrator shall:~~

7
8 ~~a) — Obtain the elevation (in relation to the mean sea level) of the lowest floor (including~~
9 ~~the basement) of all new and substantially improved structures,~~

10
11 ~~b) — Obtain, if the structure has been floodproofed in accordance with the requirements of~~
12 ~~Section 6.5 5(B)(2), the elevation in relation to the mean sea level to which the structure has~~
13 ~~been floodproofed, and~~

14
15 ~~c) — Maintain a record of all such information.~~

16
17 ~~(4) — Notify, in riverine situations, adjacent communities, the Florida Department of Economic~~
18 ~~Opportunity — NFIP Coordinating Office, and the South Florida Water Management District~~
19 ~~prior to any alteration or relocation of a watercourse, and submit copies of such notifications to~~
20 ~~FEMA.~~

21
22 ~~(5) — Assure that the flood carrying capacity within the altered or relocated portion of any~~
23 ~~watercourse is maintained.~~

24
25 ~~(6) — When the data is not available from any source, in accordance with standard set forth in~~
26 ~~Section 6.5 5(C)(2) of this Section, the lowest floor of the structure shall be elevated to no lower~~
27 ~~than three feet above the highest adjacent grade. Standards set forth in Section 6.5 5(B) shall~~
28 ~~apply.~~

29
30 **~~Sec. 6.5-6. — Appeal and Variance Procedures.~~**

31
32 **~~(A) — Appeals Procedures~~**

33
34 ~~Any appeal of the decision of the Floodplain Management Administrator shall first be heard by~~
35 ~~the Village's Planning and Zoning Board, which shall make a recommendation to the Village~~
36 ~~Commission. After the Village Commission has received the recommendation from the~~
37 ~~Planning & Zoning Board, the appeal will be heard during a public hearing, and a final decision~~
38 ~~issued by the Village Commission. The standard of review for both the Board and the Village~~
39 ~~Commission is whether the decision of the Floodplain Management Administrator erred in in~~
40 ~~any requirement, decision, or determination in the enforcement or administration of this chapter.~~
41 ~~The Village Commission shall issue the final decision as to appeal. Any person aggrieved by the~~
42 ~~decision of the Village Commission may appeal, via appellate certiorari review, such decision to~~
43 ~~the Circuit Court.~~

44
45 **~~(B) — Variance Procedures.~~**

1 ~~—— In acting upon a variance application, the Planning and Zoning Board shall make a~~
2 ~~recommendation to the Village Commission. After it has received the recommendation of the~~
3 ~~Village's Planning & Zoning Board, the Village Commission shall then make a final decision on~~
4 ~~the variance request, during a public hearing. Both the Board and the Village Commission shall~~
5 ~~utilize, amongst other relevant technical provisions of the code, the following criteria and the~~
6 ~~specific requirements of sections (C), (D), (E), and (F), below:~~

7
8 (1) ~~The danger that materials may be swept onto other lands to the injury of~~
9 ~~others;~~

10
11 (2) ~~The danger of life and property due to flooding or erosion damage;~~

12
13 (3) ~~The susceptibility of the proposed facility and its contents to flood damage~~
14 ~~and the effect of such damage on the individual owner;~~

15
16 (4) ~~The importance of the services provided by the proposed facility to the~~
17 ~~community;~~

18
19 (5) ~~The necessity to the facility of a waterfront location, where applicable;~~

20
21 (6) ~~The availability of alternative locations for the proposed use which are not~~
22 ~~subject to flooding or erosion damage;~~

23
24 (7) ~~The compatibility of the proposed use with existing and anticipated~~
25 ~~development;~~

26
27 (8) ~~The relationship of the proposed use to the comprehensive plan and~~
28 ~~floodplain management program for that area;~~

29
30 (9) ~~The safety of access to the property in times of flood for ordinary and~~
31 ~~emergency vehicles;~~

32
33 (10) ~~The expected heights, velocity, duration, rate of rise, and sediment of~~
34 ~~transport of the flood waters and the effects of wave action, if applicable, expected~~
35 ~~at the site; and~~

36
37 (11) ~~The costs of providing governmental services during and after flood~~
38 ~~conditions, including maintenance and repair of public utilities and facilities such~~
39 ~~as sewer, gas, electrical, and water systems, and streets and bridges.~~

40
41 ~~(C) — Conditions for Variances.~~

42
43 (1) ~~Variances shall only be issued when there is:~~

44
45 a) ~~A showing of good and sufficient cause;~~
46

~~b) A determination that failure to grant the variance would result in exceptional hardship; and~~

~~e) A determination that the granting of a variance will not result in increased flood heights, additional threats to public expense, create nuisance, cause fraud on or victimization of the public, or conflict with existing local laws or ordinances.~~

~~(2) Variances shall only be issued upon a determination that the variance is the minimum necessary deviation from the requirements of this chapter.~~

~~(3) Variances shall not be granted after the fact.~~

~~(4) The Floodplain Administrator shall maintain the records of all variance actions, including justification for their issuance or denial, and report such variances in the community's NFIP Biennial Report or upon request to FEMA and the State of Florida, Department of Economic Opportunity, NFIP Coordinating Office.~~

1 **~~(D) — Variance Notification.~~**

2
3 ~~Any applicant to whom a variance is granted shall be given written notice over the~~
4 ~~signature of a community official that:~~

5
6 ~~(1) The issuance of a variance to construct a structure below the base flood elevation will~~
7 ~~result in increased premium rates for flood insurance up to amounts as high as \$25 for \$100 of~~
8 ~~insurance coverage, and~~

9
10 ~~(2) Such construction below the base flood level increases risks to life and property.~~

11
12 ~~(3) A copy of the notice shall be recorded by the Floodplain Administrator in the Office of~~
13 ~~the Clerk of Court and shall be recorded in a manner so that it appears in the chain of title of the~~
14 ~~affected parcel of land.~~

15
16 **~~(E) — Historic Structures.~~**

17
18 ~~Variances may be issued for the repair or rehabilitation of “historic” structures meeting~~
19 ~~the definition in this chapter upon a determination that the proposed repair or rehabilitation will~~
20 ~~not preclude the structure’s continued designation as a “historic” structure.~~

21
22 **~~(F) — Structures in Regulatory Floodway.~~**

23
24 ~~Variances shall not be issued within any designated floodway if any impact in flood~~
25 ~~conditions or increase in flood levels during the base flood discharge would result.~~

26
27 **~~(G) — Appeal of Variance Request.~~**

28
29 ~~Any person aggrieved by the decision of the Village Commission may appeal, via appellate~~
30 ~~certiorari review, such decision to the Circuit Court.~~

31
32 ~~Secs. 6.5 7 6.5 15. Reserved.~~
33
34

1 **ARTICLE II. ADMINISTRATION**

2
3 **Sec. 6.5-16. Enforcement.**

4
5 ~~The Village Building Official shall administer and enforce the provisions of this chapter within~~
6 ~~Biscayne Park.~~

7
8 **Sec. 6.5-17. Rules for interpreting district boundaries.**

9
10 ~~The boundaries of the flood hazard areas shown on the official flood insurance rate map may be~~
11 ~~determined by scaling distances. Required interpretations of those maps for precise locations of~~
12 ~~said boundaries shall be made by the Village Building Official.~~

13
14 **Sec. 6.5-18. Variances.**

15
16 ~~(a) The village commission shall have the authority and duty to consider and act upon~~
17 ~~applications for a variance from these regulations for properties located within the incorporated~~
18 ~~areas of Biscayne Park as hereinafter set forth. The village commission is hereby advised that in~~
19 ~~granting any variances hereunder, said official shall consider the purposes of the National Flood~~
20 ~~Insurance Program as specified in Title 44, Code of Federal Regulations. Furthermore, the~~
21 ~~village commission shall consider the fact that an annual report on variances granted shall be~~
22 ~~submitted to the National Flood Insurance Administration, which report is the basis for continued~~
23 ~~availability of flood insurance to the inhabitants of the incorporated areas of Biscayne Park, and~~
24 ~~therefore variances shall be granted with extreme caution.~~

25
26 ~~(b) The village commission may grant variances from the terms of this chapter as will not be~~
27 ~~contrary to the public interest, where owing to special conditions, a literal enforcement of the~~
28 ~~provisions hereof will result in unnecessary hardship, and so the spirit of the regulations shall be~~
29 ~~observed and substantial justice done; provided, that the variance will be in harmony with the~~
30 ~~general purpose and intent of this chapter and that the same is the minimum variance that will~~
31 ~~permit the reasonable use of the premises. Upon receipt of all necessary information including a~~
32 ~~staff report, the village commission shall review the information and render a decision, either~~
33 ~~approving, modifying or denying the request. A copy of said decision shall be published in a~~
34 ~~newspaper of general circulation. All approvals or modifications shall not be effective until ten~~
35 ~~(10) days after the village commission's decision is published in a newspaper of general~~
36 ~~circulation. A courtesy notice containing the decision of the village commission may be mailed~~
37 ~~to adjacent and abutting property owners of record, their tenants or their agents, that are duly~~
38 ~~noted on the application. The failure to mail or receive such courtesy notice shall not affect any~~
39 ~~action or proceedings taken hereunder.~~

40
41 ~~(c) Variances may be issued by the village commission for the reconstruction, rehabilitation~~
42 ~~or restoration of structures listed on the National Register of Historic Places or the State~~
43 ~~Inventory of Historic Places without regard to the procedures set forth in the remainder of this~~
44 ~~section, except for subsection (d)(12), and provided the proposed reconstruction, rehabilitation,~~
45 ~~or restoration will not result in the loss of historic designation.~~
46

1 ~~(d) — In passing upon all such applications except those pursuant to subsection (c), the village~~
2 ~~commission, shall consider all technical evaluations, all relevant factors, all standards specified~~
3 ~~in other sections of this chapter, and:~~

4
5 ~~(1) — The danger that material may be swept onto other lands to the injury of~~
6 ~~others;~~

7
8 ~~(2) — The danger to life and property due to flooding or erosion damage;~~

9
10 ~~(3) — The susceptibility of the proposed facility and its contents to flood damage~~
11 ~~and the effect of such damage on the individual owner;~~

12
13 ~~(4) — The importance of the services provided by the proposed facility to the~~
14 ~~community;~~

15
16 ~~(5) — The necessity of the facility to be located on the waterfront;~~

17
18 ~~(6) — The availability of alternative locations, not subject to flooding or erosion~~
19 ~~damage, for the proposed use;~~

20
21 ~~(7) — The compatibility of the proposed use with existing and anticipated~~
22 ~~development;~~

23
24 ~~(8) — The relationship of the proposed use to the comprehensive plan and~~
25 ~~floodplain management program for that area;~~

26
27 ~~(9) — The safety of access to the property in times of flood for ordinary and~~
28 ~~emergency vehicles;~~

29
30 ~~(10) — The expected heights, velocity, duration, rate of rise and sediment~~
31 ~~transport of the flood waters and the effects of wave action, if applicable,~~
32 ~~expected at the sites;~~

33
34 ~~(11) — Upon consideration of the factors listed above, and the purposes of this~~
35 ~~chapter, the village commission may attach such conditions, limitations, and~~
36 ~~restrictions to any variance as deemed necessary to further the purposes of this~~
37 ~~chapter;~~

38
39 ~~(12) — Criteria for variances:~~

40 ~~a. — Variances shall only be granted upon a determination that the~~
41 ~~variance is the minimum necessary, considering the flood hazard, to afford~~
42 ~~relief; and in the instance of a historical building, a determination that the~~
43 ~~variance is the minimum necessary in order not to destroy the historic~~
44 ~~character and design of the building;~~

45
46 ~~b. — Variances shall only be granted upon (i) a showing of good and~~
47 ~~sufficient cause, (ii) a determination that failure to grant the variance~~

1 ~~[would result in hardship] upon or victimization of the public, or conflict~~
2 ~~with existing local laws or ordinances.~~

3
4 ~~(13) — Any applicant to whom a variance is granted shall be given written notice~~
5 ~~specifying the difference between the base flood elevation and the elevation to~~
6 ~~which the structure is to be built and stating that the cost of flood insurance will~~
7 ~~be commensurate with the increased risk resulting from the reduced lowest floor~~
8 ~~elevation.~~

9
10 ~~(14) — The village commission shall maintain the records of all variance actions~~
11 ~~and report any variances to the Federal Emergency Management Agency upon~~
12 ~~request.~~

13
14 ~~(15) — Review and appeal. Review of any decision or action of the village~~
15 ~~commission pursuant to this chapter shall be to the Dade County Environmental~~
16 ~~Quality Control Board, in accordance with the procedures set forth in section 24-6~~
17 ~~of the Code of Miami Dade County, Florida. Any person aggrieved by any~~
18 ~~decision of the Dade County Environmental Quality Control Board on an appeal~~
19 ~~may seek judicial review in accordance with the Florida Rules of Appellate~~
20 ~~Procedure.~~

21 22 **ARTICLE III. DEVELOPMENT STANDARDS**

23 24 **Sec. 6.5-26. Standards for development in a special flood hazard (SFH) area, or area** 25 ~~**outside of a special flood hazard area.**~~

26
27 ~~The Village Building Official is responsible for the administration and enforcement of this~~
28 ~~chapter and shall:~~

29
30 ~~(1) — Require development permits for all proposed construction or other improvement within~~
31 ~~said areas.~~

32
33 ~~(2) — Review permit applications for repairs within said areas to determine that the proposed~~
34 ~~repair:~~

35 ~~—— a. — Uses construction materials and utility equipment which are~~
36 ~~resistant to flood damage; and~~

37 ~~—— b. — Uses construction methods and practices which will minimize~~
38 ~~flood damage.~~

39
40 ~~(3) — Review permit applications for new construction or substantial improvements within said~~
41 ~~areas to assure that the proposed construction:~~

42 ~~—— a. — Is protected against flood damage;~~

43 ~~—— b. — Is designed (or modified) and anchored to prevent flotation,~~
44 ~~collapse or lateral movement of the structure;~~

45 ~~—— c. — Uses construction materials and utility equipment which are~~
46 ~~resistant to flood damage, and also uses construction methods and practices which~~
47 ~~will minimize flood damage; and~~

1 ~~—— d. — Provides in the plans section of the development permit application~~
2 ~~the appropriate federal flood zone, base flood elevation, crown of road~~
3 ~~information, and Miami Dade County flood criteria.~~

4
5 (4) ~~Review proposed new developments to assure that:~~

- 6 a. ~~All such proposals are consistent with the need to minimize flood damage;~~
7 b. ~~All public utilities and facilities, such as sewer, gas, electrical, and water systems~~
8 ~~are located, elevated, or constructed to minimize or eliminate flood damage; and~~
9 c. ~~Adequate drainage is provided so as to reduce the exposure to flood hazards.~~

10
11 (5) ~~Require new or replacement water supply systems and sanitary sewage systems to be~~
12 ~~designed to minimize or eliminate infiltration of flood waters and discharges from the systems~~
13 ~~and plants into flood waters, and require on-site waste water disposal systems to be located so as~~
14 ~~to avoid impairment of them or contamination from them during flooding.~~

15
16 (6) ~~Require a lowest floor elevation certification or floodproofing certification before tie-~~
17 ~~beam inspection and after the lowest floor is completed. Upon placement of the lowest floor, or~~
18 ~~floodproofing by whatever construction means, whichever is applicable, it shall be the duty of~~
19 ~~the permit holder to submit to the Village Building Official said as built certification as built in~~
20 ~~relation to mean sea level. Said certification shall be prepared by or under the direct supervision~~
21 ~~of a registered land surveyor or professional engineer and certified by same. When floodproofing~~
22 ~~is utilized for a particular structure, said certification shall be prepared by or under the direct~~
23 ~~supervision of a professional engineer or architect and certified by same. Any work undertaken~~
24 ~~prior to submission of the certification shall be at the permit holder's risk. The Village Building~~
25 ~~Official shall review the elevation certification submitted, deficiencies detected by such review~~
26 ~~shall be corrected by the permit holder immediately and prior to further progressive work being~~
27 ~~permitted to proceed. Failure to submit the survey or failure to make said corrections shall be~~
28 ~~cause to issue a stop work order for the project.~~

29
30 (7) ~~Require that all new proposed developments include within such proposals base flood~~
31 ~~elevation data, existing grade and crown of adjacent road elevations, and Miami Dade County~~
32 ~~flood criteria.~~

33
34 (8) ~~Obtain, review and reasonably utilize any base flood elevation available from a federal,~~
35 ~~state, or other source, including data developed pursuant to subsection (7), as criteria for~~
36 ~~requiring that new construction, substantial improvements, or other development in zone A on~~
37 ~~the community's FIRM meet the standards in this chapter.~~

38
39 (9) ~~Review proposed development to assure that all necessary permits have been received~~
40 ~~from those governmental agencies from which approval is required by federal or state law,~~
41 ~~including section 404 of the Federal Water Pollution Control Act Amendments of 1972, U.S.C.~~
42 ~~1334.~~

43
44 (10) ~~All records pertaining to the provisions of this chapter shall be maintained in the office of~~
45 ~~the municipal official and shall be open for public inspection.~~

46
47 (11) ~~Review proposed development to assure that:~~

1 a. ~~No use shall be made for other than crop, grove, nursery and grazing~~
2 ~~purposes, or similar uses, and no building of any type shall be constructed, erected~~
3 ~~upon or moved to any land below the elevation established by the county flood~~
4 ~~criteria map as adopted by the board of county commissioners, or the back of~~
5 ~~sidewalk elevation of the road fronting the property, or if there is no sidewalk, the~~
6 ~~elevation of the crown of road or street abutting such building site, whichever is~~
7 ~~higher.~~

8 b. ~~For uses other than residential requiring a floor, the floor elevation shall~~
9 ~~be a minimum of four (4) inches above the elevation established by the county~~
10 ~~flood criteria map, or the back of sidewalk elevation, or if there is no sidewalk,~~
11 ~~the elevation of the highest crown of road or street abutting such building site,~~
12 ~~whichever is higher, or if the road has no crown, then the highest edge of cross~~
13 ~~section of the road shall apply. For all residential uses, the floor elevation shall be~~
14 ~~a minimum of eight (8) inches above the elevation established by the county flood~~
15 ~~criteria map, or the back of sidewalk elevation, or if there is no sidewalk, the~~
16 ~~elevation of the highest crown of road or street abutting such building site,~~
17 ~~whichever is higher, or if the road has no crown, then the highest edge of cross~~
18 ~~section of the road shall apply.~~

19 c. ~~In all cases and for all uses, when the property is located in a special flood~~
20 ~~hazard area, as determined by the flood insurance rate map for the Village of~~
21 ~~Biscayne Park, Florida, the floor elevation obtained as above described, shall be~~
22 ~~compared against the base flood elevation shown on the flood insurance rate map~~
23 ~~and the higher of the two (2) shall be used for design and construction.~~

24 d. ~~The provisions of this subsection shall not apply to off street parking~~
25 ~~facilities constructed underground and other similar types of below grade areas~~
26 ~~within a building which are not lowest floor and contain neither electrical nor~~
27 ~~mechanical equipment. All such facilities constructed below grade shall be~~
28 ~~designed and constructed and contain essential equipment, if necessary, to prevent~~
29 ~~infiltration and accumulation of water or to provide for immediate and continuous~~
30 ~~elimination of water. A Florida registered engineer or architect shall submit data~~
31 ~~and a floodproofing certificate to assure that the design complies with all~~
32 ~~guidelines of subsection 6.5 4(b).~~

33
34 (12) ~~If in the review of a development application within the Village of Biscayne Park, it is~~
35 ~~determined that in the application of the provisions of this subsection the applicant would be~~
36 ~~otherwise required to provide flood protection in excess of the requirements of this chapter, then~~
37 ~~it shall be the responsibility and authority of the Village Building Official, or his designee, to~~
38 ~~review such plans and may grant a variance to the requirements of this subsection to provide~~
39 ~~flood protection which is no less than the flood protection required by this chapter based upon~~
40 ~~good engineering practice. Said decision shall be subject to appeal in accordance with subsection~~
41 ~~6.5 18(d)(15).~~

42
43 **Sec. 6.5-27. Standards for development within special flood hazard (SFH) areas.**

44
45 (a) ~~No new construction or substantial improvement of any residential structure or~~
46 ~~manufactured home shall be permitted in SFH areas, and no development permit referred to in~~
47 ~~subsection 6.5 26 of this chapter shall be issued therefor, unless said new construction or~~

1 substantial improvement has the lowest floor (including basement) elevated to or above the level
2 of the regulatory flood (100 year flood). Electrical, plumbing and other attendant utilities are
3 prohibited below the base flood elevation.
4

5 (b) — ~~No new construction or substantial improvement of any nonresidential structure shall be~~
6 ~~permitted in SFH areas, and no development permit referred to in subsection 6.5 26 of this~~
7 ~~chapter shall be issued therefor, unless said development has the lowest floor (including~~
8 ~~basement) elevated to or above the level of the base flood (100 year flood). If the lowest~~
9 ~~permitted floor level of such nonresidential structure (including basement) is below the~~
10 ~~regulatory flood level then such nonresidential structure together with attendant utility and~~
11 ~~sanitary facilities shall be floodproofed to one (1) foot above the level of the base flood; provided~~
12 ~~that the lowest floor level of such nonresidential structure (including basement) shall be not more~~
13 ~~than ten (10) feet below the base flood level. Where floodproofing is utilized for a particular~~
14 ~~structure, a registered professional engineer or architect shall certify that the floodproofing~~
15 ~~methods are adequate to withstand the flood depth, pressures, velocities, impact and uplift forces~~
16 ~~associated with the base flood, and a record of such certificates indicating the specific elevation~~
17 ~~(in relation to mean sea level) to which such structure is floodproofed shall be maintained with~~
18 ~~the Village Building Official.~~
19

20 (c) — ~~All recreational vehicles placed within this area shall either:~~
21

- 22 — (1) — ~~Be fully licensed and ready for highway use;~~
23 — (2) — ~~The recreational vehicle shall meet all the requirements for new~~
24 ~~construction, including anchoring and elevation requirements of subsection (c); or~~
25 — (3) — ~~Be on the site for fewer than one hundred eighty (180) consecutive days.~~
26 ~~A recreational vehicle is ready for highway use if it is on its wheels or jacking~~
27 ~~system, is attached to the site only by disconnect type utilities and security~~
28 ~~devices and has no permanently attached structures.~~
29

30 (d) — ~~Elevated buildings. New construction or substantial improvements of elevated buildings~~
31 ~~that include fully enclosed areas formed by foundations and other exterior walls below the base~~
32 ~~flood elevation shall be designed to preclude finished living space except allowable uses i.e.~~
33 ~~parking, limited storage and building access and shall be designed to allow for the entry and exit~~
34 ~~of floodwaters to automatically equalize hydrostatic flood forces on exterior walls. Designs for~~
35 ~~complying with this requirement must either meet the following minimum criteria or be certified~~
36 ~~by a professional engineer or architect:~~
37

- 38 (1) — ~~Provide a minimum of two (2) openings having a total net area of not less~~
39 ~~than one (1) square inch for every square foot of enclosed area subject to~~
40 ~~flooding;~~
41 (2) — ~~The bottom of all openings shall be no higher than one (1) foot above~~
42 ~~grade; and~~
43 (3) — ~~Openings may be equipped with screens, louvers, valves or other~~
44 ~~coverings or devices provided they permit the automatic flow of floodwaters in~~
45 ~~both directions;~~
46 ~~Electrical, plumbing, and other utility connections are prohibited below the base~~
47 ~~flood elevation.~~

1
2 ~~Access to the enclosed area shall be the minimum necessary to allow for parking of vehicles~~
3 ~~(garage door), (standard exterior door), or entry to the living area (stairway or elevator); the~~
4 ~~interior portion of such enclosed area shall not be partitioned or finished into separate rooms or~~
5 ~~air conditioned.~~
6
7
8

9 **Section 5.** **Fiscal Impact Statement.** In terms of design, plan application review,
10 construction and inspection of buildings and structures, the cost impact as an overall average is
11 negligible in regard to the local technical amendments because all development has been subject to
12 the requirements of the local floodplain management ordinance adopted for participation in the
13 National Flood Insurance Program. In terms of lower potential for flood damage, there will be
14 continued savings and benefits to consumers.
15

16 **Section 6.** **Applicability.** For the purposes of jurisdictional applicability, this ordinance
17 shall apply in the Village of Biscayne Park. This ordinance shall apply to all applications for
18 development, including building permit applications and subdivision proposals, submitted on or
19 after enactment.
20

21 **Section 7.** **Repealer.** Any and all ordinances and regulations in conflict herewith are
22 hereby repealed to the extent of any conflict. This ordinance specifically repeals and replaces the
23 following ordinance(s) and regulation(s): found at Section 6-5., (Ordinance 2011-03).
24

25 **Section 8.** **Inclusion Into The Code Of Ordinances.** It is the intent of the Village
26 Commission that the provisions of this ordinance shall become and be made a part of the Village of
27 Biscayne Park's Code of Ordinances, and that the sections of this ordinance may be renumbered or
28 relettered and the word "ordinance" may be changed to "section," "article," "regulation," or such
29 other appropriate word or phrase in order to accomplish such intentions.
30

31 **Section 9.** **Severability.** If any section, subsection, sentence, clause or phrase of this
32 ordinance is, for any reason, declared by the courts to be unconstitutional or invalid, such decision
33 shall not affect the validity of the ordinance as a whole, or any part thereof, other than the part so
34 declared.
35

36 **Section 10.** If any section, clause, sentence, or phrase of this ordinance is for any reason
37 held invalid or unconstitutional by a court of competent jurisdiction, the holding shall not affect the
38 validity of the remaining portions of this ordinance.
39

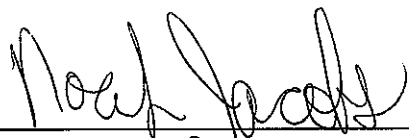
40 **Section 11.** This ordinance shall take effect immediately upon enactment.
41
42

43 The foregoing Ordinance was offered by Vice Mayor Ross who moved its
44 adoption. The motion was seconded by Commissioner Cooper.
45

46 PASSED AND ADOPTED upon second reading this 5th day of June, 2012.
47
48

1 **FIRST READING:** February 7, 2012

2 **SECOND READING:** June 5, 2012

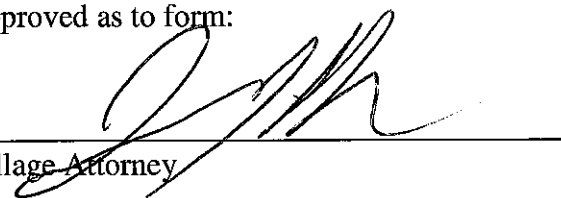
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10 Noah Jacobs, Mayor

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16 Maria C. Camara, Village Clerk

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18
19 Approved as to form:

20
21 

22
23 Village Attorney

**The foregoing ordinance upon being put
to a vote, the vote was as follows:**

Mayor Jacobs: Yes

Vice Mayor Ross: Yes

Commissioner Anderson: Absent

Commissioner Cooper: Yes

Commission Watts: Absent